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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover

Addendum

Summary of communications sent and replies received from States and other actors*

* The present report is circulated as received.

Contents

I. Introduction

1. The Human Rights Council, in its resolution 15/22, extended the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as set out in its resolution 6/29.

2. In accordance with his mandate, the Special Rapporteur regularly receives information related to the enjoyment of the highest attainable standard of health. Such information, received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights, includes allegations of serious violations of the right to health. Where appropriate, the Special Rapporteur has sent communications to the States concerned and other actors, seeking clarification and urging remedial action.

3. The present report contains, on a country-by-country basis, summaries of communications sent by the Special Rapporteur to States, responses received from States, observations of the Special Rapporteur, and follow-up communications and activities relating to earlier communications, from the period of 16 March 2010 to 15 March 2011 and replies received for the period of 2 May 2010 to 1 May 2011.

4. During the period under review, the Special Rapporteur sent a total of 46 communications concerning the enjoyment of the right to the highest attainable standard of health to 29 Member States, including three communications that originated prior to 16 March 2010 but were not included in the last year's report (A/HRC/11/20/Add.1). The Special Rapporteur received 19 responses from States and two responses from other actors.

5. The Special Rapporteur appreciates and thanks the concerned States for these replies. However, he regrets that several States have failed to respond, or when they have, have done so in a selective manner that does not respond to all the questions arising from the communication. These communications remain outstanding and the Special Rapporteur encourages States to respond to every communication, and all concerns that were raised in each communication.

6. To the extent that resources available to the mandate permit, the Special Rapporteur continues to follow up on communications sent and monitor the situation where no reply has been received, where the reply received was not considered satisfactory or where questions remain outstanding. The Special Rapporteur also invites the sources that have reported the alleged cases of violations, to review cases and responses included in this report, and send, when appropriate, follow-up information for further consideration of the cases.

II. Summary of communications sent to States and replies received

Argentina

Communication sent

7. El 22 de enero de 2010 el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento de productos y desechos tóxicos y peligrosos, junto al Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el relator Especial sobre el derecho a la salud, han enviado una carta de alegaciones al Gobierno de Argentina relativa a los impactos

negativos causados por los desechos tóxicos sobre las poblaciones indígenas locales y el medio ambiente producidas por la actividad minera en Abra Pampa.

8. Según las informaciones recibidas, la planta de fundición de plomo Metal Huasi operó entre 1955 y 1987 en la ciudad de Abra Pampa, en la provincia de Jujuy, en la que hoy viven 9.425 personas según el censo de 2001. La planta se ubica a tres cuadras de la plaza central de Abra Pampa y estaría rodeada de zonas residenciales. A lo largo de sus años en operación, la planta habría expuesto a la población local a niveles inseguros de contaminación por metales pesados. La mayoría de la población pertenece al pueblo indígena Kolla, que tradicionalmente ha habitado la región del Altiplano del norte de Argentina y el sur de Bolivia, cultivando papas, maíz y quínoa, y criando alpacas, ovejas y cabras. Se informa que tras su clausura, en el sitio de la planta habrían permanecido más de 15 toneladas de desechos acumulados de metales pesados, de los cuales por lo menos nueve toneladas tendrían altas concentraciones de plomo.

9. Al cerrar la planta, ninguna medida habría sido tomada para tratar adecuadamente los desechos o para proteger a la población de la contaminación ocasionada por éstos. Se reporta que los vientos y las lluvias habrían esparcido los residuos de los desechos de plomo por vía aérea y por filtraciones al resto de la población y que consecuentemente la salud y el medio ambiente de los habitantes de Abra Pampa habrían sido afectados negativamente. No obstante algunas intoxicaciones por plomo habrían sido registradas por primera vez en 1986, ninguna acción gubernamental se habría emprendido a la luz de este estudio.

10. En 2006, investigadores de la Universidad Autónoma de San Luis, México, el Ministerio Nacional de la Salud y el Grupo INQA habrían realizado un estudio sobre la concentración de plomo en el suelo de Abra Pampa. El estudio habría detectado concentraciones superiores a los parámetros utilizados internacionalmente y que representarían un riesgo serio para la salud de la población.

11. Por otro lado, el 6 de noviembre de 2007, el Gobierno de Argentina habría suscrito un préstamo con el Banco Interamericano de Desarrollo (BID) para ejecutar el “Programa de Gestión Ambiental para una Producción Sustentable en el Sector Productivo”. Entre otras acciones, el programa contemplaría “evaluaciones detalladas de pasivos ambientales” e “intervenciones integrales de remediación” para la Fundición de Plomo Metal Huasi, bajo la supervisión y verificación de la Secretaría de Minería de la Nación. Se reporta que de los 40 millones de dólares estadounidenses aprobados por el BID, al 30 de noviembre de 2009 se habrían desembolsado menos de 1.3 millones, sin que hubiera asignaciones directas para atender los desechos tóxicos en Abra Pampa.

12. Se reporta que la población y el medio ambiente de Abra Pampa continúan expuestos a los efectos nocivos de los desechos tóxicos de la planta Metal Huasi. El retiro definitivo de los desechos tóxicos y la limpieza del medio ambiente aún no se habrían llevado a cabo. Asimismo, la situación de salud de la población no habría sido debidamente evaluada, ni se contaría con un programa de tratamiento y seguimiento a las personas afectadas por la contaminación, lo que sería especialmente grave en el caso de las niñas y los niños.

Response received

13. Mediante carta de fecha del 12 de febrero de 2010, el Gobierno de la Republica Argentina informó que la remediación integral de Abra Pampa se concibe y desarrolla respetando el carácter federal de la propiedad de los recursos naturales (Art. 41 de la Constitución Nacional), y propiciando el desarrollo sustentable de la actividad minera.

14. En especifico, el Gobierno informa que la leyes sancionadas por el Poder Legislativo Nacional incorporan al Código de Minería bajo el Titulo X111 Sección 2ª las normas

ambientales a las que deben atenerse los operadores mineros que desean desarrollar la actividad, estableciendo estándares de protección al patrimonio ambiental, social y cultural (Ley 24.585). Además, las leyes reconocen el derecho de toda persona a ser consultada y a opinar, lo que se tradujo en la obligatoriedad de institucionalizar procedimientos de consulta o ausencias públicas (Ley general del Ambiente). Finalmente, las Leyes crean el Régimen de Libre Acceso a la información Publica Ambiental (ley 25.831).

15. El programa de Gestión Ambiental para una producción sustentable en el Sector Productivo AR-L1026, aprobado en noviembre 2007, que tiene a la Gestión ambiental Minera como subprograma (GEAMIN), tiene por objetivo garantizarle a los habitantes el ejercicio efectivo de los derechos, y el brindar condiciones para que las actuales y futuras generaciones nazcan, crezcan y se desarrollen en un contexto socio ambientalmente saludable. Entre los años 2005 y 2007 el gobierno argentino ha gestionado ante el Banco Interamericano de Desarrollo (BID) un Contrato de Préstamo para la ejecución del Programa de Gestión Ambiental para una producción sustentable en el Sector Productivo AR-L1026.

16. El programa incluye un programa de Promoción de Producción mas limpia, a ejecutarse por la Secretaria de Ambiente y Desarrollo Sustentable de la Nación y un Programa de Gestión Ambiental Minera (GEAMIN), a implementarse por la Secretaria de Minería de la Nación. El Subprograma de Gestión Ambiental Minera responde al compromiso asumido por el Estado Nacional y las provincias que lo suscriben, de desarrollar sustentablemente la industria minera en el país. En el marco del Subprograma Gestión Ambiental Minera- GEAMIN- la Secretaria de Minería de la Nación ejecuta un componente denominado “Apoyo a la Gestión Ambiental de las áreas mineras degradadas por actividad pretérita”, que incluye el financiamiento para la remediación integral de tres pasivos ambientales, considerados prioritarios por su implicancia para la salud de las poblaciones ya su afectación al ambiente.

Observaciones

17. El Relator Especial agradece al Gobierno de Colombia por su respuesta.

Australia

Communication sent

18. On **1 July 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Australia to call attention to information received concerning the health status of a Turkish citizen, Mr. Mehmet Ince, who was detained by the Australian government in Maribyrnong Detention Centre (MIDC), Melbourne.

19. According to the information received, Mr. Mehmet Ince alleged that he had been detained at MIDC for the last 15 months. Mr. Ince apparently had a well documented history of mental illness, and for the past 12 years he had received medication to treat his illness. Since his detention at MIDC, his doctors had allegedly increased the doses of his medication to nearly double the amount he was administered while earlier in prison (to nearly 600mg), and had added another medication, at a dosage of 200mg. These additions to his standard medication regime were allegedly due to the accumulated effects of detention, coupled with the long-term effects of incarceration.

20. Mr. Ince allegedly experienced insomnia and anorexia since his medication regime was changed, with weight loss of more than 13kg since entering detention. Mr Ince attributed these physiological changes to side effects of the increased dosage of medication he was required to take at the same time.

21. Allegedly, the visiting psychiatrist at the MIDC had recommended a referral to the Toowong mental hospital in Brisbane, Queensland, but the hospital had refused to admit Mr. Ince as an inpatient because of Department of Immigration and Citizenship security requirements. The department allegedly did not consider or suggest any alternative options for the treatment, nor have they considered the possibility of less restrictive detention options, such as a Pending Removal Bridging Visa or community detention, in order to minimize any ongoing psychological trauma.

Observation

22. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Bangladesh

Communication sent

23. On **8 April 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the right to food and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent a joint allegation letter to the Government of Bangladesh to call attention to information received concerning the situation of unregistered Rohingya asylum-seekers, refugees and migrants in Bangladesh.

24. According to information received, thousands of Rohingyas in Myanmar had sought refuge in Bangladesh and the majority resides in Cox's Bazar. 28,000 of these were recognized as prima facie refugees by the Government of Bangladesh, and lived in official camps. However, an estimated 220,000 others remained unregistered and largely unassisted. Without official recognition, unregistered Rohingyas were not permitted to receive official relief. There were further reports of a spate of new arrivals that were forced to live as irregular migrants and were vulnerable to exploitation and abuse.

25. Unregistered Rohingya asylum-seekers, refugees and migrants in Bangladesh were reportedly victims of violence and attempted deportation carried out by both state and non-state actors. Violent attacks by law enforcement agencies against unregistered Rohingya asylum-seekers, refugees and migrants, who had settled outside the two official refugee camps in Cox's Bazar District, reportedly started on 2 January 2010. Allegedly, more than 500 Rohingyas were arbitrarily arrested in January; some of those arrested were pushed back across the Myanmar border and others were charged under immigration legislation and sent to prisons in Bangladesh. Police raids started in Cox's Bazar town, initially targeting Rohingya rickshaw pullers. In June and July 2009, local authorities were said to have demolished shelters and forcibly removed inhabitants in an attempt to clear a space around the perimeter of the official camp at Kutupalong.

26. Due to what appeared to be violent attacks on the Rohingya presence in the country, thousands of unregistered Rohingya asylum-seekers, refugees and migrants, had moved into a makeshift camp (outside two official refugee camps in the Cox's Bazar district). Since October 2009, the makeshift camp had grown by 6,000 people, with 2,000 of these arriving in January 2010 alone. As the numbers swell, nearly 29,000 people were living in severely inadequate conditions with no infrastructure to support them, limited access to adequate nutrition and to water and sanitation facilities, and therefore at serious risk of ill health.

27. While thousands of Rohingya were settled and had lived in the local community for many years, they were reportedly perceived as a burden on the already scant resources and

viewed as a threat to the local job market as they provided cheap labor to employers. Their unpopularity was fuelled by the local media, and local politicians. According to one report, a xenophobic campaign was being orchestrated by Anti-Rohingya Committees formed and allegedly funded by the local political elite, voicing their hostility to the Rohingya presence more loudly than ever and demanding that the Government take action against the Rohingya. Announcements had been disseminated by loudspeakers in villages and towns ordering the Rohingya to leave and also threatening locals harbouring them with arrest and prosecution. The local media acted as a vehicle for anti-Rohingya propaganda.

28. Serious concerns had been raised in relation to the impact of the violent attacks on the access to food of the residents of the makeshift camp. The Rohingya population in the makeshift camp were critically food insecure and a significant number of children suffered from acute malnutrition. According to the information received, factors contributing to this situation included a dramatic increase of the unregistered Rohingya population in the makeshift camps, a general lack of access to food relief rations and to livelihood opportunities as well as their inability to leave the camp for fears of being victims of ongoing violence against them. Further, access to food for the registered refugees in the adjacent Kutupalong refugee camp may also have been affected as they often shared their meagre food relief rations with unregistered refugees.

Observation

29. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

30. On **21 February 2011**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Bangladesh to call attention to information received concerning Mr. Salauddin Quader Chowdhury (aged 63), a Member of Parliament from the opposition Bangladesh National Party (BNP).

31. According to the information received, in the early hours of 16 December 2010, Mr. Chowdhury was arrested by the security forces of Rapid Action Battalion, Detective Branch police, and the Directorate-General Foreign Intelligence at his apartment in Benani neighbourhood in Dhaka, Bangladesh. It is reported that the arrest was linked to an incident in June where a car was set on fire in Dhaka, killing a passenger. Reportedly, Mr. Chowdhury has not been charged, nor has he had access to a lawyer since his arrest and was only allowed to meet his relatives for the first time on 22 December 2010.

32. It is further reported that following his arrest on 16 December 2010, Mr. Chowdhury was tortured by the Bangladeshi security forces during interrogation at a private residence, with a physician accompanying them. Mr. Chowdhury was reportedly tortured for several hours, including by applying electrodes to his genitals, beating him, slitting his stomach with razors and twisting his toenails and fingernails with pliers. It is further reported that Mr. Chowdhury was repeatedly revived after falling unconscious during the ordeal. Only when his condition further deteriorated under interrogation, was he taken to the Bangabandhu Medical Hospital for treatment (at 7:30 a.m. in the morning of 16 December 2010). Reportedly, video footage taken in the hospital grounds showed Mr. Chowdhury as weak, in pain, unable to walk on his own and with an apparent blood stain on his shirt. After an hour in the hospital, Mr. Chowdhury was reportedly taken to the headquarters of the Detective Branch of the Police, where he was again subjected to torture, including by

further electrocution. It is alleged that when Mr. Chowdhury was first visited by his relatives on 22 December 2010, he was in a critical health condition, his genitals and nose were still bleeding three days after the most recent electrocution, and there were cut marks on his stomach and bruises all over his body.

33. The arrest and alleged torture of Mr. Chowdhury had been widely reported in the local media. Following several media inquiries, the Inspector General of Police reportedly denied that Mr. Chowdhury had been tortured and informed the media that on the morning of 16 December 2010, he was taken to hospital to be treated for an asthma condition.

34. It is further reported that Mr. Chowdhury was likely to undergo additional interrogation by the police following the charges of involvement in crimes against humanity and a subsequent arrest warrant brought against him on 19 December 2010, by Bangladesh's International Crimes Tribunal, which had been set up to try crimes committed during the 1971 war of independence. On 22 December 2010, following the Court order, Mr. Chowdhury was reportedly placed in Dhaka Central Prison pending proceedings in both the June and the 1971 cases. It is reported that Mr. Chowdhury was not present at the Court hearing and had not been allowed to meet his lawyers. He had reportedly been kept in the holding cell downstairs and was later transferred to a remote prison outside Dhaka.

35. Despite the reported deterioration in his health, Mr. Chowdhury has since his arrest reportedly been denied access to independent, specialized medical treatment. Moreover, the Government has reportedly actively sought, through the courts, to ensure that such access is denied. Reportedly, on 2 January 2011, in response to Mr. Chowdhury's wife's petition to the High Court Division of the Supreme Court seeking admission to a cardiac hospital for independent medical treatment, the High Court Division ordered on 3 January 2011, that Mr. Chowdhury be given access to medical treatment within two days. However, following an appeal by the Government, the Appellate Division of the Supreme Court stayed the order for six weeks on 4 January 2011.

36. It is further reported that on 5 February 2011, upon arrival in Kashipur Central Jail where Mr. Chowdhury was being detained, Mr. Chowdhury's relatives were told that he was unwell and physically unable to see them. Only when the ambulance arrived to take Mr. Chowdhury to hospital, was the family able to see him. It is claimed that Mr. Chowdhury's health severly deteriorated while in Kashipur Central Jail, and may have had a stroke. It is alleged that Mr. Chowdhury was taken to the Government Bangubandhu Sheikh Mujib Medical University Hospital, but that he refused to be treated there and claimed to have recognised the doctors who have participated in reviving him after he was repeatedly tortured in December 2010. It is reported that Mr. Chowdhury was taken back to prison and possibly put into solitary confinement.

37. It is also reported that on 6 February 2011, the family members were not allowed to see Mr. Chowdhury in Kashipur Central Jail and were told by the prison guard that the visiting hours were over and that they should try to come back another day. In an attempt to visit Mr. Chowdhury on 8 February 2011, the family members and Mr. Chowdhury's lawyer were told by the prison doctor that Mr. Chowdhury refused to meet them as he was weak and physically unable to walk.

Response received

38. By letter dated **9 March 2011**, the Government acknowledged receipt of the communication and assured that it would be forwarded to the relevant authorities in Bangladesh.

Observation

39. The Special Rapporteur thanks the Government for its response and is looking forward to receive further information.

Brazil

Communication sent

40. On **6 April 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert on the right to safe drinking water and sanitation, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter concerning the conditions of detention at the Provisional Detention Centre in Cariacica (Centro de Detenção Provisória de Cariacica).

41. According to the information received, on 4 February 2010, the Provisional Detention Centre in Cariacica held 498 individuals, while its capacity is 240. The names of remandees are unknown, but those convicted are: Orlando Santos Xavier, Uemerson João Batista Klein, Diego Alexandre da Silva Fagundes, Adeilton Araújo de Souza, Adonias Francelini Dias, Antonio Fabia da Silva, Raikas Onose da Cunha, Rodrigo Zani Pinheiro, Ozéias Sabino de Souza, Fabricio José Ambuzeiro, Eliezer Alves de Araújo, Oziel Passos da Silva, Adoterivo Vieira Sabarense, Edi Angelis Ferreira dos Santos, Adriono Gonçalves Hoffman, Bruno da Conceição, Fabio Machado de Souza, Gabriel Barbosa da Silva, Jefferson Ruy Moura, Fernando Gonçalves Fernandes, Osmar Oliveira da Silva, Jonas Teixeira dos Santos, Jhonny Lopes da Silva, Carlos Gabriel Silva da Conceição, Flavio Ribeiro do Nascimento, Ronaldo Roberto dos Reis, Edson Luiz Miranda da Silva, Tiago Ramos Santana, Osvaldo Junior Santos da Cruz, Wesley Alves Pereira, Welerson Braga Martins, Pablo Porfirio dos Santos, Allessandro Santos Ribeiro, Carlos Alexandre do Carmo da Silva, Danies Jardins das neves, Maxwel Rodrigues Bento, Alessandro da Conceição Jesus, Alipio Rodrigues Junior, Anderson Vieiro dos Santos, Carlos Alberto Santos da Silva, Rafael da Conceição Tavares, Valmi/Valdeci de Lanis Santana, Ralph Cardoso Pereira Maritello Machado, Wellington de lima ou Eliomar Leal Rodrigues, Fabio Machado de Souza, Bruno da Conceição Santos, Thiago Batista da Fonseca, Leonardo Barreto Nascimento, Antônio Fabio da Silva Dias, Joseimar Alves Correa, Rafael dos Santos Sampaio, Cristiano de Freitas Santos, Jailton de Souza Santos, Fernando da Silva Prati, João Carlos Barbosa de Oliveira, Everton Lima Oliveira, Jose Luiz de Oliveira Tavares, Osiel Passos da Silva, Algemiro Penha Cardozo Souza, Sidney Rocha da Silva, Renato Amorim Santos, Claudiomar Pereira, Sivaldo Lisboa da Silva, Eder Santos, Jardson Dias da Silva, Julia Gonçalves Menarte, Jocimar Rodrigues Pereira, Nailton Jose Chagas and Edvaldo Santos de Santana.

42. The above-mentioned individuals, as well as those remandees whose names are not known are currently being held in 24 import-export type containers, measuring 28.2 squared meters, which have been converted into cells by opening three very small barred windows on each side. Between 20 and 30 people are held in each container, with no distinction between remandees and convicted detainees. These types of containers were also used at the Provisional Detention Centre in Novo Horizonte in 2009. However, this detention facility has since been closed down.

43. The sleeping arrangements and bedding at the Provisional Detention Centre in Cariacica are insufficient, resulting in regular injuries due to detainees falling from improvised hammocks, which are necessary due to the overcrowding. In addition, there is no sewage system surrounding the containers, but only holes in the containers which lead urine and excrement to outside buckets. The water supply for drinking and washing is also

inadequate, as detainees only have access to water for a few minutes every couple of hours. Furthermore, detainees are locked up throughout the day, even during the summer months, facing extremely hot temperatures. Finally, information was received regarding insufficient medical attention, despite reports of many illnesses among the detainees. A recent outbreak of scabies forced the authorities to burn all mattresses and uniforms. Additionally, on 4 February 2010, a man called "Adoterivo", who suffered from hypertension, reportedly died due to the lack of medical attention and the poor conditions in the containers.

44. In addition to the physical conditions at the Provisional Detention Centre in Cariacica, it is alleged that detainees have been regularly threatened or subjected to violence, including with rubber and lead bullets, as well as pepper and tear gas.

Response received

45. By letter dated **20 August 2010**, the Government of Brazil responded to the aforementioned allegation letter sent on 6 April 2010. It indicated that the situation prompted action of Brazilian State bodies involving investigation of the nature and extent of complaints regarding the operation of Espirito Santo's prison system, and spurred in response the adoption of measures to overcome the problems identified.

46. The government was aware of inadequacy of prison facilities in the Espirito Santo State, noting that some facilities did not provide inmates with academic study space or with work activities. Family visits lasted approximately fifteen minutes and took place in the prison lounge due to absence of a designated area for this purpose. Water was provided for twenty minutes per hour. Health checks were provided either on-site or in public care facilities should the detainees require hospital admission.

47. The relevant bodies that have become engaged in the issue are the Council for the Defence of the Human Person, the National Council for Crime and Prison Policy and the National Justice Council.

48. The first two institutions conducted visits to a number of state prison facilities and have discussed with Espirito Santo officials measures to address the identified problems.

49. The National Justice Council signed an agreement with the Espirito Santo State Government in which the local government commits itself to taking measures to address the issues identified in the prison system. Following this, the National Justice Council conducted on-site visits to monitor compliance with the commitments made in the agreement.

50. Additionally, a monitoring, follow-up, enhancement and inspection group was established to oversee the state's prison system.

51. The Espirito Santo State Government has taken various measures to mitigate the problems affecting states' prisons, such as the transfer of inmates held in police precincts to provisional detention centers, replacing military police officers assigned to detention centers with correction officers, expanding health assistance and job placement programs for prisoners.

52. However, overcoming the challenge of overcrowded detention facilities requires a long-term effort to expand space available and enhance prison management, especially as the shortage of prison places in units administered by the Espirito Santo State Secretariat of Justice has reached a total of 6,926.

53. To do so, construction and renovation of prisons have been undertaken: eleven prison units were expected to be completed by March 2011. Besides, the Espirito Santo State Under-Secretary for Prison Affairs committed to preventing further mixing of provisional detainees with convicted offenders.

54. With regard to Adoterivo Vieira Sabarense's death, the Government of Brazil indicated that he received health monitoring and several referrals to hospital units. The medical report as well as his death certificate do not suggest that his death was the result of inappropriate medical treatment, but investigation will continue until the circumstances and reasons of his death are clarified.

55. Finally, the Government of Brazil reaffirmed its commitment to promoting and protecting human rights and expressed its appreciation for the work of the Special Procedures System of the United Nations Human Rights Council.

Observation

56. The Special Rapporteur thanks the Government for its response received on 20 August 2010.

Communication sent

57. On **1 November 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter in relation to the legal status of abortion and reproductive self-determination in Brazil.

58. According to information received, in Brazil, abortion is permitted only in cases of rape or to save the life of a pregnant woman. In every other circumstance, Brazil's Penal Code reportedly penalizes women who undergo induced abortions, with penalties ranging from one to three years of imprisonment and physicians providing abortions may receive sentences of up to 20 years' imprisonment.

59. It is reported that, between 1989 and 2009, only 1,606 women were able to procure legal abortions in Brazil. Furthermore, it is reported that only 40 public hospitals in Brazil provide abortion services, and five Brazilian states do not provide any access to legal abortion services (Mato Grosso do Sul, Amapá, Piaui, Roraima and Tocantins). Up to one million unsafe abortions are estimated to occur annually in Brazil, and up to 250,000 women annually are estimated to be treated in hospitals for complications of unsafe abortion. Post-abortion dilatation and curettage (which the World Health Organization recommends only be used when safer methods of vacuum aspiration and medical abortion are unavailable) is reportedly the second most common obstetric procedure performed in public hospitals in Brazil, following self-administration of drugs to induce a medical abortion (which are not legally available for purchase in Brazil).

60. In May 2010, it is reported that the Commission on Social Security and Family of the House of Representatives in Brazil approved bill 478/07, which seeks to establish rights for the "unborn." In this bill, the embryo is defined as a human being, with life beginning at the time of conception, before reaching the uterus through natural means or following in vitro fertilization.

61. Concern is expressed that should the bill pass into law, it may potentially be invoked to criminalize further women's access to abortion services, even in circumstances currently permitted under the Penal Code (to save a pregnant woman's life and in case of rape). As such, the proposed legislation could undermine women's rights to health, including reproductive health, and to physical integrity.

Observation

62. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Cambodia

Communication sent

63. On **25 March 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights in Cambodia sent a joint allegation letter concerning the draft Law on Drug Control in Cambodia.

64. According to the information received, Cambodia's existing Drug Law, which was adopted in 1996 and amended in 2005, provides that a person can be ordered into treatment by various authorities. These include prosecutors, who may summon a person charged with illegal drug consumption to court and issue an order to attend "any detoxicating establishment". For this same offense, a court may order that the person "undertake an appropriate treatment measure[s] in accordance with his/her health condition". Following a sentence, a person convicted of illegal drug consumption may request "medical treatment in accordance with their respective health conditions", rather than serving the sentence. A person can also be ordered to receive drug dependency treatment if a spouse, parents, relatives or a prosecutor request a civil court to issue an order, and the court is convinced that the person is addicted to illegal drugs and "is known as dangerous for others".

65. Although the law may be useful for people who are drug dependent and in need of treatment, many of the provisions are too broad, with few or no procedural safeguards against abuse. The law also allows persons to be committed without their consent and without a limit to the duration of such treatment, oversight or review of the treatment order. A further concern is that the broad provisions in the law can lead to many non drug-dependent persons to receive unnecessary treatment, as the drug detention centers often hold people who do not meet the criteria of the National Authority for Combating Drugs (NACD) for drug dependence. According to the information received, 25% of those detained for crystal methamphetamine in 2008 were "not dependent".

66. The draft Law on Drug Control contains several provisions which are of the same nature as the current Drug Law, by awarding broad powers for a court to compel a person to accept drug treatment. According to article 72, a person may be forced into drug treatment under the following conditions: (i) At the request of a spouse, parents, relatives or prosecutor, a civil court may order a person into drug treatment if the person is "drug dependent and is known to be dangerous to others"; (ii) By the court, if the person commits a designated offence and the person is "intoxicated" by a controlled substance; and (iii) At the referral or arrest of a guardian, relative or authority. These provisions may lead to an arbitrary application of the law, as the determination that an individual is "known as dangerous to others" is vague and may be implemented in a very broad manner. Additionally, the provision allowing a spouse, parent or relatives to request a person's detention is open to abuse by those who may be motivated by embarrassment or would like to have their family members out of their lives for some time, rather than seeking treatment that may be in that person's best interests. Compulsory treatment should rather be limited to cases where the person is in imminent danger of harm to him or herself or poses imminent physical danger to others due to their drug dependence.

67. Additionally, several provisions in the draft law are not in compliance with the UNODC/WHO Principles of Drug Dependence Treatment, which require that drug dependence treatment, like other medical treatment, may be carried out on a person without or contrary to his/her consent only in clearly defined exceptional circumstances. Any detention should also be subjected to a clearly defined time limit to review its continued necessity and that the person subjected to compulsory treatment, or legal representative, has a right and is able to challenge the legality of the detention.

68. A separate concern raised by the draft law concerns article 67(5), which states that "officers who implement drug treatment and rehabilitation measures in accordance with the right to drug treatment shall not be prosecuted for their activities". This provides immunity for officials who commit serious abuses in the course of their duties. The "right to drug treatment" should only be applicable when a patient has submitted to treatment on the basis of fully informed consent, as stated in article 67(2), and not when a person is undergoing compulsory treatment. However, it has been alleged that based on the current practice, all treatment in drug treatment centers are considered voluntary, thus leading to immunity for those officers who may commit abuses against people in compulsory treatment. On the other hand, the draft law should ensure a prompt, independent, thorough investigation and prosecution of perpetrators of torture, inhuman or degrading treatment or punishment.

Observation

69. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Cameroun

Communication sent

70. Le **27 Octobre 2010**, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, conjointement avec le Groupe de travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants a envoyé un appel urgent au Gouvernement du Cameroun concernant l'arrestation de M. Bruno Afaaba et de M. Marc-Henri Batta pour leur supposée homosexualité.

71. Selon les informations reçues, M. Afaaba et M. Batta auraient été arrêtés le 27 septembre 2010 par des officiers du 1er escadron de gendarmerie à Yaoundé, et seraient actuellement détenus à la prison de Kondengui. Ils auraient été arrêtés après que leurs maisons aient été fouillées. Lors de cette fouille, des boites de préservatifs et de lubrifiants auraient été trouvées. Les deux hommes auraient été détenus et le 4 octobre, auraient été forcés à subir un examen anal pour confirmer leur activité sexuelle. Il est aussi allégué que M. Afaaba et M. Batta ont été menottés pendant l'examen médical et n'ont pas été informés sur leur droit de garder le silence, ni d'avoir recours à une assistance juridique.

Observation

72. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications.

China (People's Republic of)

Communication sent

73. On **16 April 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders sent a joint urgent appeal to the Government of China regarding the state of health of Mr. Hu Jia, a Beijing-based HIV/AIDS activist, co-founder and former director of the Beijing Aizhixing Institute for Health Education. Mr Hu Jia has been the subject of communications sent by several mandate holders following his detention on 27 December 2007 and his sentencing on 3

April 2008 to three years and six months' imprisonment and one year of deprivation of political rights for "inciting subversion of state power" and concerning the appeal process on 23 April 2008. The combined response of China's Government to these communications was received on 4 June 2008.

74. According to the information received, Mr. Hu Jia was sentenced to 3.5 years in prison in April 2008. He previously suffered from cirrhosis of the liver, and was transferred on 30 March 2010 from Beijing City Prison to Beijing City Hospital to undergo tests. Mr. Hu Jia has remained in Beijing City Hospital since then and allegedly his state of health is rapidly deteriorating. It is believed that the poor nourishment and bad conditions in prison contributed to his ailing health. Although the results of the medical tests have not yet been shared with members of his family, it is feared that Mr. Hu Jia may be suffering from liver cancer. Ms. Zeng Jinyan, the wife of Mr. Hu Jia, has formally requested the relevant prison authorities to release him on medical grounds.

75. Concern is expressed that the living conditions and nourishment in prison may not be adequate given the rapidly deteriorating health situation of Mr. Hu Jia. Further concern is expressed regarding the physical and psychological integrity of Mr. Hu Jia.

Response received

76. The Special Rapporteur thanks the Government for its reply received on 7 June 2010 and awaits its translation by the United Nations Conference Services.

Communication sent

77. On **22 September 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders sent a joint urgent appeal regarding the situation of Mr. Tian Xi, an activist who has reportedly been detained for his advocacy on issues related to HIV/AIDS.

78. According to the information received, Mr. Tian Xi, a 23-year-old college graduate from Henan Province, reportedly sustained a head injury in an accident as a child, which required a blood transfusion as treatment. The blood transfusion allegedly infected him with HIV, hepatitis B and hepatitis C. Since then, Mr. Tian Xi and his family have reportedly petitioned the hospital and local government for compensation, both for himself and for others infected with HIV. Allegedly, thousands of people in Henan and other provinces were infected with HIV through state-sponsored blood selling programs in the 1990s, and through resulting hospital transmissions of HIV from infected blood and blood products.

79. Henan provincial courts reportedly refuse to accept any lawsuits relating to HIV, leaving victims with no legal recourse. It is reported that where no other recourse exists in China, citizens may bring complaints against local officials to higher-ranking government offices, but that only a small percentage of these complaints receive a favourable response. It is reported that Henan authorities have detained individuals trying to draw attention to the issue of compensation for HIV transmission through contaminated blood and blood products.

80. It also has been reported that Mr. Tian Xi worked for several years at Aizhixing Health Education Institute, a non-governmental Chinese AIDS organization. In spring 2010, Mr. Wan Yanhai, the founder and director of Aizhixing, reportedly relocated his family to the United States, alleging government harassment.

81. On 23 July 2010 Mr. Tian Xi reportedly received a text message from the Xincai County Clerk, inviting him to return to Henan to negotiate a resolution to his HIV/AIDS issue. Mr. Tian Xi subsequently returned home to Henan and reportedly the Xincai County

Clerk made several appointments to meet Mr. Tian Xi. However, on each occasion, when Mr. Tian Xi arrived for the appointment, he was unable to see the Clerk.

82. On 5 August 2010, Mr. Tian Xi reportedly visited the Xincai Number One People's Hospital to see the hospital director about obtaining HIV medication, as he did not bring a sufficient quantity with him to Henan. It is alleged that the hospital director told Mr. Tian Xi that he did not possess the authority to provide the required medication. It is reported that Mr. Tian Xi was upset by this response and allegedly broke some tea cups in the hospital director's office.

83. On 6 August 2010, the Xincai County Police allegedly took Mr. Tian Xi away, leaving the family with a 15-day detention order. It appears that he may have been briefly released, as it is reported that Mr. Tian Xi contacted Asia Catalyst on 10 August 2010, indicating that he was at risk of arrest. Documents from the Town Board of Lugu Township reportedly exist, which, inter alia, request the police to detain Mr. Tian Xi in connection with his HIV/AIDS advocacy; conclude that Mr. Tian Xi had been influenced by Mr. Wan Yanhai, the Chinese AIDS activist; and recommend that Mr. Tian Xi be "taken in to public security."

84. On 17 August 2010, it is alleged that the police took Mr. Tian Xi to the Xincai County Number Two People's Hospital for treatment, where he remained for two days. On 18 August 2010, the Xincai County Police allegedly issued an order for Mr. Tian Xi's detention on "suspicion of intentional destruction of property," apparently for the broken tea cups during his meeting with the hospital director of Xincai Number One People's Hospital. On 19 August 2010, the police reportedly took him away, and Mr. Tian Xi was transferred from administrative to criminal detention in the Shangcai County Detention Centre. On 21 August 2010, Mr. Tian Xi's mother and aunt reportedly went to the Shangcai County police station to see him, but were refused.

85. Concern is expressed that the detention of Mr. Tian Xi may not be based on the "suspicion of intentional destruction of property," but instead be motivated by Mr. Tian Xi's ongoing petitioning to seek compensation and treatment for hospital transmissions of HIV from infected blood and blood products. Concern is also expressed that Mr. Tian Xi may not be receiving appropriate and adequate medical treatment while being held in detention. At this stage we do not wish to prejudge the accuracy of the above described allegations and we wish to seek clarification from your Excellency's Government in this regard.

Response received

86. The Special Rapporteur thanks the Government for its reply received on 16 February 2011 and awaits its translation by the United Nations Conference Services.

Communication sent

87. On **4 November 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of China concerning the situation of Mr. Wei Danquan, aged 42, a detainee at the Jidong Prison in Tangshan City, the People's Republic of China.

88. According to the information received, on 26 May 2008, Mr. Wei was arrested by Shanhaiguan police at his work place. In June 2008, Mr. Wei was sentenced to four years' imprisonment by a Shanhaiguan Court and was reportedly transferred to Jidong Prison in Tangshan City.

89. On 8 October 2008, Mr. Wei's wife found him in critical health conditions when she visited him in prison. Mr. Wei had reportedly become very thin, pale and weak and was unable to lift up his head in the visiting room. It is reported that on 27 October 2008, Mr. Wei's health has deteriorated significantly. It was alleged that the prison officials ignored Mr. Wei's family's request to release him for medical parole allegedly claiming that Mr. Wei's situation was not serious enough to qualify for medical parole.

90. On 18 May 2010, one of Mr. Wei's relatives talked to physician in charge of the prison. It was reported that Mr. Wei's relative was told that an X-ray taken on 30 April 2010 had reportedly revealed that Mr. Wei had developed type III tuberculosis in the left upper lobe of his lung, and fluid had accumulated in the lung. Mr. Wei was extremely thin and lost consciousness several times. It was claimed that Mr. Wei had blood in his phlegm, and suffered from persistent cough and chest pain. It was reported that there are three holes in his lung and the lung membrane has become thicker and sticky causing him breathing difficulties.

91. In view of Mr. Wei's deteriorating health, serious concern was expressed about his physical and mental integrity.

Response received

92. On **2 December 2010,** the Government of China replied to the joint urgent appeal of 4 November 2010 and made the following reply which is reproduced in its entirety:

93. Wei Danquan is an ethnic Zhuang male born in 1967 and residing in Zhangjiakou, Hebei Province. On 18 June 2008 he was sentenced, in accordance with the law, by the people's court of Shanhaiguan district, Qinhuangdao, Hebei Province, to 4 years' imprisonment (26 May 2008 to 25 May 2012) for the crime of using a cult to subvert law enforcement; he is currently serving his sentence at Jidong prison in Hebei Province.

94. Wei had already contracted tuberculosis prior to entering prison. In May 2010, presenting symptoms such as a cough, chest pains and weakness, he underwent a hospital examination which diagnosed tuberculosis in his right lung and tuberculous pleurisy; the next day he was admitted for treatment. After entering hospital, he was assigned, in the light of his condition, to the infectious respiratory diseases unit for a systematic course of treatment involving nutritional support, antitubercular medication and cough suppressants. Chest x-rays were regularly taken, his liver and kidney functions were tested and he was given routine blood tests as well as blood sedimentation tests. Since leaving the hospital he undergoes monthly medical examinations and is still under the care of the hospital. Under Chinese law, such a condition does not qualify prisoners for release on medical grounds, and neither Wei nor his representative have requested it.

Observation

95. The Special Rapporteur thanks the Government for its response received on 2 December 2010.

Communication sent

96. On **4 November 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on freedom of religion or belief sent a joint urgent appeal to the Government of China regarding the situation of Mr. Qiao Yongfang, a practitioner of Falun Gong, who was being detained in the Hohhot No 1 Men's Prison in the People's Republic of China.

97. On 6 August 2010, Mr. Yongfang, aged 60, a Falun Gong practitioner, was sentenced by the Huimin District People's Court to three years' imprisonment on charges of "using a heretical organization to subvert the law". Mr. Yongfang was reportedly held in the Hohhot ("Huhehaote" in Chinese) No 1 Men's Prison. In September 2010, Mr. Yongfang was reported to have been transferred to a separate special unit within the prison referred to as a 'prison training team'. It was alleged that Falun Gong practitioners were often held in separate prison facilities where they were reportedly being tortured and ill-treated and forced to renounce their belief.

98. It was reported that Mr. Yongfang was in poor health conditions. He suffered from diabetes, for which he was allegedly not receiving adequate medical treatment. Mr. Yongfang's lawyers alleged that he had previously been tortured while in detention, and sustained injuries on his head, for which, it was alleged, he did not receive adequate medical treatment.

99. Concern was expressed about the health of Mr. Yongfang. In view of allegation that Mr. Yongfang was transferred to a special unit within the prison, serious concern was expressed about his physical and mental integrity.

Response received

100. On **2 December 2010,** the Government of China replied to the joint urgent appeal of 4 November 2010 and made the following reply which is reproduced in its entirety:

101. Qiu Yongfang is an ethnic Han male born in 1950 and residing in Zhangjiakou, Hebei Province. Because he made use of a cult to subvert the law, on 21 June 2010 he was sentenced by the Huimin District People's Court in Hohhot, Inner Mongolia Autonomous Region, to 3 years' imprisonment (9 June 2009 to 8 June 2012). He is now serving his sentence at No. 2 prison in Hohhot.

102. During a medical examination upon his admission to prison, Qiu stated that he had had diabetes for 10 years and had always taken medication for it. The prison medical examination concluded that his health was normal. Once he was in prison, no complaints were filed on this subject, either by Qiu or on his behalf. Accusations in the communication such as those stating that Qiu is "not receiving adequate medical treatment" and "was transferred to a special unit" do not reflect the actual situation.

103. During a medical examination upon his admission to prison, Mr Yongfang stated that he had had diabetes for 10 years and had always taken medication for it. The prison medical examination concluded that his health was normal. The government added that once he was in prison, no complaints were filed on this subject, either by Mr Yongfang or on his behalf. The Government of China concluded that accusations in the communication such as those stating that Mr Yongfang is "not receiving adequate medical treatment" and "was transferred to a special unit" did not reflect the actual situation.

Observation

104. The Special Rapporteur thanks the Government for its response received on 2 December 2010.

India

Communication sent

105. By letter dated **4 December 2009**, the Government of India replied to the Joint urgent appeal sent on 8 June 2009 by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Roy Varghese, an individual who had been charged with murder, but had been pronounced unfit to stand trial (see A/HRC/11/20/Add.1, para 112-115).

Response received

106. The Government informed the Special Rapporteur that it had found the allegations of ill-treatment to be inaccurate. The subject was receiving regular medical care and was being kept in a ward with about sixty other people. The Government also indicated that the authorities had made available reports on his mental condition as and when demanded by the local court where the matter was sub justice. According to the last report, the subject was not yet fit to stand trial.

Observation

107. The Special Rapporteur thanks the Government for its response received on 4 December 2009.

Communication sent

108. On **1 July 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of India concerning the health situation of the citizens of Manipur, who were being affected by political activity and conflict within the region.

109. It was alleged that the ongoing economic blockade enforced by All Naga Student Association Manipur (ANSAM) and others in the Indian state of Manipur since 11 April 2010 were having deleterious effects on the right to health of the people of Manipur. The strike was allegedly resulting in the blockade of two national highways which were the major supply routes of Manipur (whose population is 2.4 million), resulting in acute shortages of food, medicine and other essential commodities in the state. The strike was in protest against the state government's notification for holding elections in various districts of Manipur, and the organizations in question had allegedly declared the initial strike to be extended for an indefinite period.

110. Allegedly, in the more remote districts of Manipur government food storage facilities were exhausted, and health care infrastructure had collapsed – these structures were already fragile due to the ongoing conflict situation in the state. In the capital city, the government and private hospitals had allegedly closed down emergency services, and were unable to maintain life support systems due to shortage of essential supplies including medicines and nasal cannula oxygen.

111. The price of food grains and other household supplies like rice, kerosene and cooking gas had also allegedly escalated to such a level that residents could not afford to buy household provisions anymore, and fuel supplies had also ceased, inhibiting transport services.

112. Allegedly, in one particular incident, two protestors supporting a visiting dignitary were killed, and a group of 80 men and women were injured and hospitalized in the police action, which triggered further protests.

113. As this political situation continued, the Government of India was allegedly failing to take any action to ensure that lifesaving drugs and other essential medical supplies were made available to the people of Manipur.

Response received

114. On **6 December 2010,** the Government of China replied to the allegation letter of 1 July 2010. It indicated that the State Government took all possible measures to get adequate supplies of food item, health care items and other essential items by providing security convoys along relevant national highways.

115. The Government indicated that contrary to the allegations contained in the communication, the emergency services in both public and private hospitals were functioning as usual and that stocks of medicines and life saving drugs had been airlifted in May and June 2010. The authorities constituted task forces and rapid response teams in order to take immediate containment measures.

Observation

116. The Special Rapporteur thanks the Government for its response received on 6 December 2010.

Communication sent

117. On **21 September 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter concerning the lack of access to palliative care and pain treatment in India.

118. According to the information received, more than half of India's Regional Cancer Centres did not offer any palliative care for pain management. Only 10 of the 29 existing Regional Cancer Centres had effective programmes and five others offer limited palliative care. It was estimated that more than one million people suffered from moderate to severe pain due to advanced cancer, and only a few received proper treatment. The same occurred for people with HIV/AIDS, paraplegics, patients with advanced renal diseases and others who required palliative care. Additionally, many of the Regional Cancer Centres did not have health workers who were trained in palliative care.

119. With regard to the availability of morphine, hospitals and pharmacies generally stopped stocking it as a result of the adoption in 1985 of the Narcotic Drugs and Psychotropic Substances Act. The Act had been created in order to create a balance between the obligation to ensure the availability of opioids for medical purposes and to take steps to prevent their misuse. However, burdensome licensing procedures in state regulations meant that hundreds of thousands of patients did not have access to the necessary medications. In 2008, only 4% of those requiring morphine had access to it. In 1998, the national Department of Revenue drafted a model rule for states to use in order to simplify the medical use of morphine. The Department at the time indicated that existing regulations denied "easy availability of morphine to even terminally ill cancer patients", and caused "undue sufferings and harassment". However, despite this recommendation by the Department of Revenue, only 14 of the 35 states had implemented the model rule.

120. In terms of policy, there was no national palliative care policy or program and, despite the fact that considerable resources had reportedly been invested to strengthen the cancer care system in India, very few funds had been allocated to palliative care. At the state level, only Kerala had a palliative care program in place.

121. The failure to ensure availability of palliative care left many patients suffering from severe pain, which may constitute cruel, inhuman or degrading treatment.

Observation

122. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

123. On **28 September 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on freedom of religion or belief sent a joint allegation letter to the Government of India concerning the situation of 65 Pakistani members of the Mehdi Foundation International (MFI) who were detained in Central Jail Tihar, New Delhi, India. Their case had been subject of an urgent appeal sent jointly by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture on 26 September 2007 (see A/HRC/7/10/Add.1, paras. 100-104) and the Special Rapporteurs wanted to acknowledge receipt of India's Government's response dated 12 February 2009 (reproduced in A/HRC/13/40/Add.1, para. 101).

124. According to new information received, since their arrival in Central Jail Tihar in April 2007, Ms. Safia Shafi, Ms. Bushra Mansoor, Ms. Shabana Gohar, Ms. Samira Wasim and Ms. Anisa Jabbar who were pregnant at the time of their arrest have given birth to five children. Reportedly, medical staff treated the pregnant MFI women inhumanly and slapped their faces during delivery. After delivery, no food or medication was given to the women for the next two days, while in the hospital food is usually served two times a day. Sanitary pads were not provided after delivery. One MFI woman was not administered stitches correctly and subsequently new stitches were readministered without any local anesthetic. During a medical checkup in Deen Dayal Hospital, it was found that Ms. Qamar Parveen and Ms. Sajida Waheed have cysts in their ovaries. While surgery was recommended, the Senior Medical Officer refused this, reportedly stating that "You take care of it at your own expense outside after your jail term."

125. On 28 January 2010, the Government of India rejected the applications made on behalf of the MFI detainees for political asylum and subsequently all criminal charges against them were reportedly withdrawn. The MFI members continue to be held in custody, pending a decision by the courts on whether their deportation to Pakistan would be lawful.

126. In Central Jail Tihar, the MFI members are detained in unsanitary and overcrowded facilities which have reportedly resulted in communicable diseases. If MFI detainees are sick they are scarcely referred to an external hospital and the prison authorities make them clean drainage lines with their bare hands.

127. Mr. Iqbal Shahi suffers from fits and there is neither medical care in the prison nor is he referred to outside physicians. Mr. Iqbal Shahi has been diagnosed with a tumor in his brain; however, reportedly no medical help is forthcoming.

128. Mr. Muhammad Ashfaque is diabetic and suffers from an illness affecting his backbone. The prison staff only gave him Metaformin tablets and his sugar level is getting higher. When Mr. Muhammad Ashfaque raised this issue with the prison staff he was reportedly told that "medication is very expensive outside and we cannot afford it, nor can we refer you to an outside hospital".

129. Mr. Abdul Waheed underwent heart bypass surgery before his arrest and is still suffering from acute heart-related illnesses and blood pressure. Reportedly, he is not getting proper medical treatment but only receives pain-killers. The prison authorities asked Mr. Abdul Waheed to take care of his medical needs at his own expense from outside.

130. Mr. Abdul Rashid is diabetic, but the prison authorities did not allow him to visit an Outpatient Department. Due to high diabetic condition his eyesight deteriorated and he has blurred vision.

131. Ms. Kulsoom Khan suffered from fever in May 2007. The prison authorities gave her medication that did not help and the prison staff allegedly beat her. Ms. Kulsoom Khan was then sent to Deen Dayal Hospital where some liquid was withdrawn from her spine which generated pain in her lower spine. In Deen Dayal Hospital, Ms. Kulsoom Khan was reportedly given electric shocks once or twice daily. She was tied to the bed with ropes and would be unconscious for hours. Upon her return to Central Jail Tihar she was weak but she was reportedly refused to special diet including milk, egg, cheese and fruit. Ms. Kulsoom Khan developed anemia, however, she did not receive medication nor proper medical care.

132. Currently, eleven MFI children remain in detention in Central Jail Tihar (Farah Naz Gohar, Sana Riaz, Shahzaib, Hassan AlGohar, Asad Gohar, Zill-e-Gohar, Mary Gohar, Abhaya Gohar, Aamir Gohar, Tabassum Gohar and Abasah Gohar). However, the prison authorities do not have the required medication for children and the detained children are given adults' medication instead. Thus the two-year-old Ms. Abasah Gohar was given full antibiotics over 15 days and subsequently developed gastric problems.

Response received

133. On **14 February 2011**, the Government of India replied to the joint allegation letter of 28 September 2010. The Government indicated that it found the allegations to be inaccurate. The Government's investigations into the subject showed that all inmates detained in Tihar's Central Jail were provided with due attention and medical care. In case of serious diseases, inmates are taken to hospitals outside the jail with all costs being borne by the jail.

134. Mr. Iqbal Shahi was under regular treatment at one of India's most renowned hospitals. Mr. Abdul Rashid was referred to an eye specialist. The allegations that Mr. Ashfaq and Mr. Waheed were asked to take care of their medical needs at their own expense was unfounded, as all prescribed medicines were being provided to them free of charge.

135. For women inmates, the Government indicated that a gynecological camp was organized within the premises in collaboration with a private hospital as part of the campaign to diagnose diseases early. All pregnant women were provided with adequate pre-natal as well as post-natal care. The allegation that pregnant women were treated inhumanely during after birth were unfounded. All children were housed in a crèche, fed and vaccinated adequately. The allegation that children were given adult medication was incorrect, as sufficient pediatric drugs were made available in the jail dispensary.

Observation

136. The Special Rapporteur thanks the Government for its response received on 14 February 2011.

Communication sent

137. On **1 October 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on access to safe drinking water and sanitation sent a joint allegation letter to the Government of India concerning the situation of hundreds of villagers in the districts of Rayagada, Nuapada, Kashipur, Nabarangpur, Koraput, Kalahandi, Malkangiri and Balangir in the state of Orissa, India.

138. It was alleged that since the last rainy season in August 2009, villagers in the above mentioned districts in Orissa had been dying in great numbers of diarrhea, cholera and other water-borne diseases, and it was reported that the government had not taken substantial action to prevent such diseases in these largely tribal, poor and rural areas.

139. In 2007, the Chief Minister of Orissa visited Rayagada district, the most affected area, and allegedly promised to provide safe drinking water to the villages. Reportedly, the government invested a great deal of money to install tube wells to supply drinking water. It was reported that the villagers did not find the wells satisfactory. Local human rights groups claimed that the actual depth of the tube did not meet the required standards for safe drinking.

140. Reportedly, the Orissa state government spent INR 133.85 crores (USD 28.9 millions) on services, including the digging of 65,680 tube wells between the years 2001 to 2006. According to an official report (the Comptroller and Auditor General's report) 2,103 died of diarrhea between 2002 and 2006 in these districts.

141. Most recently, it was reported that the Collector of Rayagada district visited Rayagada and ordered drinking water to be supplied by tankers. However, it was reported that these water tankers provided water for four days only, after which villagers were allegedly driven to drink local pond water. It was also alleged that many of the villages continued to lack access to safe drinking water.

142. In addition to these claims, it was alleged that basic health facilities, goods and services, including human resources, were substantially lacking in the abovementioned districts. For example, whereas 65 doctors were approved for the Nuapada district, 28 posts (43 per cent) allegedly still remained vacant. The state government was allegedly sending doctors, medicines and food, and setting up emergency camps in the affected villages, but reportedly nowhere near the appropriate pace or in sufficient numbers.

Observation

143. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

144. On **24 January 2011** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of India concerning the effect of the proposed European Union–India free trade agreement on access to medicines, both within India and in other parts of the developing world.

145. According to the information received, the European Union (hereafter "EU") and India have been negotiating a free trade agreement (FTA) for a number of years, and reportedly it was to be concluded sometime this spring. It was alleged that if India entered into a free trade agreement with the EU that included "TRIPS-plus" provisions, its ability to produce generic medicines for domestic and international consumption would be restricted. As a result, millions of people in India and around the world – in particular people living with HIV many of whom are dependent on generic medicines produced in India – would allegedly lose access to necessary medicines.

146. It was reported that in India out-of-pocket expenditure amounts to the largest share of health expenditure and that about 70 per cent of that expenditure went towards buying medicines. Therefore, the affordability and availability of medicines directly impact the rights to health and to an adequate standard of living for citizens of India. It was reported that medicines were sold at relatively affordable prices in India because most of the

medicines were locally produced and due to competition among companies producing generic medicines.

147. Reports indicate India is the largest global supplier of low-cost, good quality medicines, most of which go to the developing world. It was reported that 67 per cent of medicines exported from India went to developing countries and 92 per cent of HIV/AIDS patients in low- and middle-income countries used generic antiretroviral drugs produced in India. Approximately 50 per cent of the essential medicines that the United Nations Children's Fund distributes in developing countries and 80 per cent of all medicines distributed by the International Dispensary Association were reportedly manufactured in India. A recent study emphasized India's central role in generic medicines production especially with respect to HIV treatment. It concluded that about four million people started treatment between 2003 and 2008 using Indian generic drugs. It was alleged that such gains could be lost under the current terms of the draft FTA.

148. It was also reported that negotiations had thus far been closed to the public, and draft texts had not been made available to anyone beside select government officials. Finally, the negotiations also reportedly occurred without any public consultation with relevant stakeholders that might be affected by changes in intellectual property policy related to access to medicines.

149. Finally, it was alleged that the three Union Ministries – Health and Family Welfare, Commerce and Industry, and Chemicals and Fertilizers – rejected the proposal to change existing Indian patent and regulatory laws, stating that it would adversely impact public healthcare costs. It was alleged that the Office of the Prime Minister had been favouring the inclusion of "TRIPS-plus" intellectual property provisions in the draft EU-India FTA. It was also reported that the Office had arrived at this decision after meeting with an international organization representing multinational pharmaceutical companies. Moreover, no human rights impact assessment had been undertaken with respect to the draft FTA.

150. Some of the "TRIPS-plus" provisions relating to intellectual property rights that were reportedly included in the negotiating text were as follows:

- Patent-term extensions: Requiring India to provide an extension of patent terms through Supplementary Protection Certificates for products that require domestic regulatory approval.
- Data exclusivity: Requiring India to create intellectual property protection for test data submitted to drug regulatory authorities for marketing approval by originator companies, and preventing use of that data for generic drug approval by the regulatory authority.
- Border measures: Requiring India to provide for and agree to broader border measures that are likely to affect medicines in transit from India to other developing countries by giving customs authorities power to investigate goods in transit for intellectual property violations.
- Enforcement Provisions: Requiring India to shift the burden of enforcement of private intellectual property rights to the State and utilise State resources to enforce private intellectual property rights, which would require amendments to existing Indian law.
- Investment: Requiring many patents and other intellectual property rights to be considered "investments" subject to anti-expropriation measures. It is alleged that this would limit India's ability to issue compulsory licenses.

151. Concern was expressed that the proposed EU–India free trade agreement could unduly limit the production of generic medicines in India, leading to a substantial reduction

in both the domestic and global supply of low-cost, high quality medicines for the most vulnerable populations, and in particular the poor. Additionally, concern was expressed that some such "TRIPS-plus" provisions could restrict the ability of India to make use of flexibilities allowed under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Response received

152. On **25 January 2011** and **15 February 2011,** the Government of India replied to the allegation letter sent on 24 January 2011. The Government indicated that the India-EU bilateral trade and investment agreement were still ongoing at the time and that the Government remained mindful of the concerns raised by stakeholders, including civil society.

153. It added that the Government would not agree to any text that would affect available flexibilities under TRIPS and access to medicines.

Observation

154. The Special Rapporteur thanks the Government for its response received on 25 January and 15 February 2011.

Indonesia

Communication sent

155. On **4 May 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Indonesia regarding Mr. Filep Karma. During his country mission to Indonesia, the Special Rapporteur on torture interviewed Mr. Karma on 15 November 2007 at Abepura Prison (see A/HRC/7/3/Add.7, Appendix I, para. 30).

156. According to the information received, Mr. Filep Karma had been in detention in the province of Papua since December 2004. In August 2009, he complained of pain in the lower abdomen, difficulty in urinating and testicular swelling. He underwent medical tests, which indicated that he was suffering from bronchopneumonia, excess fluid in his lungs, a urinary tract infection and various other health problems. Despite the fact that the treating doctor recommended he receive additional treatment in Jakarta, he remained in Papua, as prison authorities indicated they lacked the funds to transfer and treat him. Mr. Karma had suffered from health problems before his arrest, but prison conditions aggravated his health condition.

157. Concern was expressed that Mr. Karma's physical integrity may be at risk if he did not receive further medical attention. Particular concern was expressed regarding detention conditions and the lack of medical care.

Observation

158. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Iran (Islamic Republic of)

Communication sent

159. On **5 May 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on freedom of religion or belief sent a joint urgent appeal to the Government of Iran concerning Ayatollah Sayed Hossein Kazemeyni Boroujerdi, Iranian citizen, who has been the subject of joint urgent appeals dated 20 December 2006, 30 August 2007 and 3 June 2009. In its response dated 14 February 2008, the Government of the Islamic Republic of Iran indicated that Mr. Boroujerdi had committed "anti-Islamic teaching acts" and that the Special Court for the Clergy had sentenced him in this context to ten years of imprisonment.

160. According to the new information received, Mr. Boroujerdi has spent approximately one year out of his prison sentence in solitary confinement at Evin Prison and Yazd Central Prison. During his detention, and particularly since January 2010, he has been subjected to various forms of ill-treatment, including apparent attacks on his life. From 22 to 27 April 2010, he was held in solitary confinement in the “information ward”, as a punishment for speaking on the phone about the conditions and treatment at Evin Prison. During this time, the guards reportedly threatened to amputate both his hands if he spoke of the torture and ill-treatment he had been subjected to. It is also believed that on 27 April, several gases were diffused in his cell. As a result, Mr Boroujerdi was unable to stand easily, suffered from vertigo and vomiting, and had injuries on his vocal cords, forcing the guards to transfer him to the general ward. He has allegedly not received any medical attention and has been barred from receiving any visits.

161. In light of the allegations of torture and ill-treatment against Mr. Boroujerdi, as well as his urgent need for medical attention, concern was expressed for his physical and psychological integrity.

Response received

162. In a letter dated **7 October 2010**, the Government of Iran replied to the urgent appeal of 5 May 2010. It indicated that Mr. Boroujerdi had been convicted solely for his violent actions on the basis of law and due process and not on the basis of his beliefs.

Observation

163. The Special Rapporteur thanks the Government for its response received on 7 October 2010.

Communication sent

164. On **1 July 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the situation of human rights defenders sent a joint urgent appeal to the Government of Iran concerning Majid Tavakkoli, aged 24, member of the Islamic Students’ Association at Amir Kabir University.

165. According to the information received, Majid Tavakkoli was first arrested on 7 December 2009 after he gave a speech at a student demonstration at Amir Kabir University in Tehran. He ended a seven-day hunger strike in protest for being placed in solitary

confinement when he was transferred to the general section of Evin Prison on 29 May 2010. However, on 22 June, he was transferred to Section 350, where the conditions were believed to be poor, with overcrowded cells, inadequate food and sanitary facilities. Mr. Tavakkoli suffered from a respiratory condition which worsened during his detention, and for which he had not received medical attention.

166. Mr. Tavakkoli was beaten upon arrest. Additionally, on 8 December 2009, Fars News Agency published pictures of Mr. Tavakkoli wearing women's clothing, indicating he had been wearing them to avoid arrest. However, it is alleged that he was forced to wear the clothes to humiliate him.

167. His trial took place in January 2010, but his lawyer was not allowed to attend. Mr. Tavakkoli was sentenced to five years imprisonment for "participating in an illegal gathering", one year for "propaganda against the system", two years for "insulting the Supreme Leader" and six months for "insulting the President". He was also banned from participating in political activities or leaving the country for five years.

Observation

168. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

169. On **12 August 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the Independence of Judges and Lawyers sent a joint urgent appeal to the Government of Iran regarding Ms. Sarah Emily Shourd.

170. According to the information received, Ms. Sarah Emily Shourd was arrested on 31 July 2009, together with two companions, by Iranian border guards near the Ahmed Awa waterfall resort area, Iraq. They were forced to cross the border to Iran, and Ms. Shourd was taken to Evin Prison, where she was still being held. Since her arrest, Ms. Shourd had been held in solitary confinement and without any charges brought against her. She had only received one family visit and she had had no access to her lawyer. In addition, she suffered from a precancerous condition on her cervix which needed to be monitored and treated, and she had recently found a lump on her breast. However, she had only seen a doctor once since her detention.

171. Due to the extended detention in solitary confinement and lack of adequate medical attention, concern was expressed for the physical and psychological integrity of Ms. Shourd.

Observation

172. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Kyrgyz Republic

Communication sent

173. On **11 June 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of the Kyrgyz Republic concerning the physical and mental integrity of Mr. Vugar Khalilov, a U.K. citizen held in detention in Bishkek. Mr.

Khalilov worked for more than 20 years as a professional journalist and now runs his own public relations firm, Flexi Communications, in the Kyrgyz Republic.

174. According to the information received, on 12 April 2010, members of the National Security Service arrested Mr. Khalilov shortly after a meeting with the Ambassador of the United Kingdom to Kazakhstan and the Kyrgyz Republic, and took him to their headquarters in Bishkek. Since then, Mr. Khalilov has been reportedly held in solitary confinement.

175. According to reports received, Mr. Khalilov's health has deteriorated since his detention and he is suffering from severe spinal hernia, which could paralyze him if not treated urgently. In early May, a medical report stating the urgent need for treatment and comprehensive medical examination was submitted allegedly to the City Prosecutor of Bishkek and presented to the Government but reportedly no action has been taken.

176. Serious concern was expressed about the physical and mental integrity of Mr. Kahalilov and the allegations that his health had deteriorated severely after his detention. In this connection, very serious concern was expressed about allegations that Mr. Kahlikov was not receiving appropriate medical treatment without which he could face permanent disability. Further concern was expressed about the allegations that Mr. Khalilov had been held in solitary confinement since his arrest.

Response received

177. The Special Rapporteur thanks the Government for its reply received on **14 June 2010** and awaits its translation by the United Nations Conference Services.

Communication sent

178. On **12 August 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on arbitrary detention sent a joint urgent appeal to the Government of the Kyrgyz Republic concerning Mr. Ulugbek Abdusalamov, an ethnic Uzbek journalist in detention in southern Kyrgyzstan.

179. According to the information received, Mr. Ulugbek Abdusalamov was detained on 14 June on charges of "inciting ethnic hatred" under Article 299 of the Kyrgyzstani Criminal Code and transferred to a police detention centre in the town of Jalal-Abad two days later. Mr. Abdusalamov had a cerebral hemorrhage in 2009, suffered from high blood pressure, stomach ailments and a heart condition. On 29 June, he was transferred to a regional hospital after his lawyer filed six requests, but was later returned to police detention in Jalal-Abad. On 24 July, he was once again taken to the hospital upon his lawyer's request, after his health continued to suffer. He was subsequently taken back to police detention, despite the fact that his condition was said to be very poor. Concern was expressed for the physical and physiological integrity of Mr. Ulugbek Abdusalamov, due to the lack of adequate medical attention.

Responses received

180. On **5 October 2010** and **2 November 2010**, the Government of the Kyrgyz Republic replied to the joint urgent appeal of 12 August 2010.

181. The Government indicated that Mr. Abdusalamov was prosecuted and subsequently detained for incitation to ethnic hatred.

182. Following the deterioration of his health, Mr. Abdusalamov was transferred from remand custody to house arrest. Subsequently, the office of the Ombudsman of the Kyrgyz Republic received a letter from the president of the Central Asia PEN Centre requesting assistance in defending Mr. Abdusalamov and obtaining information on his situation, as information received indicated that he might have been subjected to torture and other ill-treatment.

183. As a result staff of the Ombudsman's office visited Mr. Abdusalamov on 9 September 2010. He explained that his health deteriorated while in custody and in detention, and he stated that all his requests for medical assistance had been met, including being taken to a specialised medical ward when his condition worsened. He did not confirm the use of torture or other forms of coercion and had no complaints regarding food or his treatment.

184. Mr. Abdusalamov put this information in writing and signed it.

Observation

185. The Special Rapporteur thanks the Government for its response received on 5 October and 2 November 2010.

Mauritius

Communication sent

186. On **31 March 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter to the Government of Mauritius regarding a speech given on Wednesday 24 February 2010 at the launch of the National Policing Stategic Framework at the Paul Octave Wiehe Auditorium (University of Mauritius) by Prime Minister Navin Ramgoolam, who allegedly pledged to reinstate the death penalty for drug offences, including for trafficking Subutex (buprenorphine). Subutex is a drug commonly used to treat opiate dependence, and is acknowledged as an essential medicine by the World Health Organization.

187. The Prime Minister allegedly warned people who are on prescription Subutex against travelling to Mauritius, due to plans to scale up enforcement relating to trafficking in the drug. In his speech, the Prime Minister allegedly stated that: "We have to be severe. Subutex will not be allowed in the country. Even those who have to take Subutex under medical prescription will not be spared. It is better that they do not come to Mauritius on holidays with Subutex; they will have to face severe penalties…If you cannot live without Subutex, do not come to Mauritius. Go somewhere else."

188. Although buprenorphine is not currently used as opioid substitution therapy ('OST') in Mauritius – Methadone being primarily used instead – any proposed restrictions and penalties on use and possession of buprenorphine in Mauritius would constitute a significant infringement of the right to health for nationals of Mauritius, as well as visitors to the country. Additionally, the alleged proposal concerning imposition of the death penalty represents an infringement of other rights, including the right to life.

Response received

189. On **22 June 2010** the Government of Mauritius replied to the allegation letter sent on 31 March 2010. It indicated that the Prime Minister of the Republic of Mauritius was

committed to fighting crime and especially of violent and heinous crimes. As a result the reintroduction of the death penalty had to be seen in that perspective and would be considered as a measure of last resort, applied to extreme circumstances and would respect necessary safeguards. The Government stated that so far no legislative action with the goal of reintroducing death penalty or to affect those arriving in the country with Buprenorphine prescriptions (Subutex) had been initiated. In any case, any decision to review legislation regarding the death penalty would be subject to normal consultative processes.

190. The Government provided extra information on national legislation and policy. In August 2008, the Dangerous Drugs Act 2000 was amended to provide for tougher penalties in respect of offenses dealing with Subutex. A person who unlawfully possesses sells or distributes subutex may be liable to prosecution. The law provides for the use of subutex for medical purposes in quantities not exceeding those strictly required for the purpose in question.

191. The right to health ranked very high in the economic and social development agenda of the Government of Mauritius and in this context the Government of Mauritius continued to maintain the welfare system including access to free and quality health system to all.

192. The Government indicated that a National Day Care Centre for the Immuno-Suppressed had been set up to provide treatment, care and support to people living with HIV/AIDS including drug users and sex workers, free of charge. The Government added that the HIV and AIDS Act that came into force in 2007 provided an effective legal framework to eliminate all forms of discrimination against people living with HIV/AIDS. The Government emphasized the role of NGOs: the National Agency for the Treatment and Rehabilitation of Substance abusers worked in close cooperation with civil society. NGOs also addressed the psychosocial and psychological needs of drug users and acted as a watchdog to prevent discrimination against them.

Observation

193. The Special Rapporteur thanks the Government for its response received on 22 June 2010.

Mexico

Communication sent

194. El **14 de Febrero de 2011**, el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención del señor José Ricardo Maldonado Arroyo, Director de la Red de Personas Afectadas por VIH (REPAVIH) con sede en Mérida, Yucatán, y activista de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero (LGBT). REPAVIH es una organización que desde 2006 ofrece asesoramiento médico y apoyo emocional a las personas afectadas por el virus VIH en Yucatán y lleva a cabo campañas de sensibilización y contra la discriminación.

195. Según las informaciones recibidas, el 4 de diciembre de 2010, el Sr. José Ricardo Maldonado Arroyo habría sido detenido de manera arbitraria por elementos de la policía judicial del Estado de Yucatán. Los agentes habrían alegado que el motivo de su arresto era la presunta investigación de un delito y, sin mostrarle una orden de detención, le habrían

esposado, vendado los ojos e introducido y transportado en un vehículo no oficial donde le habrían insultado y se habrían dirigido a él con expresiones homófobas.

196. Según las informaciones recibidas, los agentes habrían golpeado al Sr. Maldonado Arroyo en repetidas ocasiones en la cara, el pecho y la espalda mientras le preguntaban acerca de su trabajo de defensa de los derechos de las personas que viven con el VIH y del colectivo de gays, lesbianas, bisexuales y personas transgénero. El Sr. Maldonado Arroyo habría permanecido cerca de cuatro horas retenido con el rostro cubierto con su propia playera tiempo durante el cual habría sido obligado a cambiar varias veces de vehiculo. Posteriormente, habría sido puesto en libertad bajo la amenaza de volver a ser agredido si presentaba alguna queja por los hechos ocurridos.

197. La identidad de uno de los agentes a cargo de la detención del Sr. Maldonado Arroyo, el cual vestían cazadora negra con la leyenda "PGJ", ha sido puesta en conocimiento de nosotros.

198. Según se informa, el 5 de diciembre de 2010, el Sr. Maldonado Arroyo habría presentado una denuncia ante la Procuraduría General de Justicia en el Estado así como una queja ante la Comisión de Derechos Humanos del Estado de Yucatán (CODHEY). En primera instancia se habría abierto un expediente por el delito de "lesiones" pero descartando el abuso de autoridad o tortura. Por su parte, la CODHEY habría también realizado su propia investigación, incluyendo fotografías sobre las lesiones, certificados médicos y testimonios. A pesar de la solicitud por parte del Sr. Maldonado Arroyo de medidas cautelares a su favor, se informa que éstas habrían sido denegadas de forma verbal.

Observations

199. El Relator Especial lamenta que al finalizar este informe, no se habia recibido una respuesta a la comunicación del **14 de febrero de 2011.**

Myanmar

Communication sent

200. On **6 May 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on contemporary forms of racism sent an urgent appeal to the Government of Myanmar regarding two detainees who were in need of urgent medical care and appeared to be denied access to it.

201. Ma Khin Khin Nu was being detained in Insein Prison where she fell ill and was in urgent need of medical attention. According to the information received, when she first started feeling unwell the medical staff in Insein Prison provided some medication that only worsened her condition. Since then, Ma Khin Khin Nu had not received any other treatment nor had she been examined further. She had not been given permission to get treatment outside of the prison. Aside from this illness, she was also reported to be suffering from a range of ailments including skin boils and lice.

202. Information received suggested that Ma Khin Khin Nu was sentenced to 17 years imprisonment in 2005 for supposedly giving false information about her ethnicity in order to get citizenship in Myanmar along with other members of her family. Ma Khin Khin Nu and her family members including father U Kyaw Min were all born in Myanmar and have been lifelong residents. In 2005, after Kyaw Min joined other elected members of parliament to call for the legislature to be allowed to sit, and after meeting with

representatives of the International Labour Organisation visiting Yangon, it is believed that officials accused Kyaw Min and his family of lying about their ethnicity and falsely obtaining citizenship, accusing them of being Bengali rather than nationals of Myanmar. Five members of Ma Khin Khin Nu's family were charged under section 18 of the 1982 Citizenship Act that, "A citizen who has acquired citizenship by making a false representation or by concealment shall have his citizenship revoked, and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand" and under the 1950 Emergency Regulations. Kyaw Min did not have a lawyer in court and explained that his family is Rohingya but because this is not an officially recognized ethnic group they had complied with designations of ethnicity determined by officials at the time. However, the court rejected this argument and found them guilty of lying about their identity. A lawyer lodged appeals for Kyaw Min and his family at the Yangon Divisional Court and Supreme Court on a range of grounds pointing to the factual and procedural flaws in the original case; however, the courts successively dismissed the appeals without considering the substance of the appeals at all and merely restating what had already been decided in the lower-level court.

203. We had also received information that Ko Mya Aye, who was being detained at Taungyi Prison in Shan State and was one of the leaders of 88 Generation Students Group, was being denied access to proper medical treatment that he urgently needed for a heart condition. Ko Mya Aye appeared to be suffering from angina which had become unstable causing heart failure and requiring urgent medical treatment. He was also said to be suffering from hypertension and gastric problems. The medical tests he required could apparently only be done in Yangon. On 9 April 2010, he was moved from Loikaw Prison in Karenni State to Taungyi Prison in Shan State. Both prisons were far from emergency medical care he would have needed if he had had another heart attack, as well as for his family to make regular visits. Furthermore, the conditions under which Ko Mya Aye was being held, in a cell intended for death row prisoners without a toilet or running water, and where he was denied any exercise were believed to contribute to his ill-health.

204. In August 2007, Ko Mya Aye was among the 14 leaders of the 88 Generation Students Group arrested, reportedly without warrants. In November 2008, Ko Mya Aye received a sentence of 65 years in a closed court at Insein Prison for violation of the Electronic Funds Transfer Law and the Organization of Association Law.

Response received

205. On **8 July 2010**, the Government of Myanmar replied to the urgent appeal sent on 6 May 2010.

206. It indicated that Mya Aye had been transferred from Loikaw Prison to Taungy in order to provide him proper medical care. Since his arrival there he has received proper medical care by a medical team supervised by Dr. Nay Lynn Tun and Dr. Hla Thein. The government added that since the authorities had not received any complaint about the treatment of the victim, no investigation had been undertaken.

207. With regard to Khin Khin Nu, the Government indicated that she has received proper medical care by several doctors ever since her arrival at Insein Prison. No complaints had been received regarding her treatment and as a result no investigation was undertaken regarding her case either.

Observation

208. The Special Rapporteur thanks the Government for its response received on 8 July 2010.

New Zealand

Communication sent

209. On **28 December 2010** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of New Zealand regarding rejections of visa applications of persons living with HIV/AIDS for temporary stay in New Zealand.

210. According to the information received, pending the approval process of visa applications, applicants for temporary entry (longer than six months) to New Zealand must reportedly be evaluated by Immigration New Zealand to determine whether applicants were of "acceptable standard of health". It was alleged that applications for entry from persons living with HIV/AIDS were rejected on the basis of their health status and because those applicants were "likely to impose significant costs or demands on New Zealand's health services".

211. It was reported that, in some cases, applicants living with HIV were given opportunity to comment on the initial medical assessment. It was alleged that, having provided additional information of stable health condition and financial viability, they were still denied entry visa to New Zealand or were asked to apply for a medical waiver, for which they were ineligible.

212. Concern was expressed about the alleged discrimination against persons who are living with HIV/AIDS on the basis of their unsuitability to meet the "acceptable health standard" requirement of the New Zealand immigration policy.

Response received

213. On **28 February 2011**, the Government of New Zealand replied to the allegation letter sent on 28 December 2010. It replied to the questions asked by the Special Rapporteur and it indicated that New Zealand did not discriminate against people living with HIV/AIDS with regard to visa applications. In particular, the Government specified that New Zealand did not have a blanket ban on entry to New Zealand for people with HIV/AIDS, with the exception of the Recognized Seasonal employer scheme for horticultural and viticulture industries, which effectively excludes applicants with both tuberculosis and HIV/AIDS.

214. Instead, HIV/AIDS is treated like any other medical condition, with visa determinations being made on an individualised basis, taking into account several factors such as anticipated costs of care. The Government indicated that medical conditions including HIV/AIDS did not override human rights obligations.

215. In order to obtain a visa in the New Zealand, an applicant must have an acceptable standard of health except in the following three situations:

- the applicant is entering New Zealand for specific medical treatment and is granted a visa for this purpose
- the applicant is granted a waiver (if he has family in New Zealand, or if he has been granted refugee status)
- if an exception is applied to policy when the applicant is not eligible for waiver.

216. A person is determined to have an acceptable standard of health when he/she is unlikely to be a danger to public health, unlikely to impose significant costs or demands on New Zealand's health services or special education services, and when he/she is applying for a visa to undertake work or study and is able to undertake that work or study. A "stable" health condition may or may not qualify as an acceptable standard of health. An applicant

whose health is stable but only through ongoing hospital or high cost pharmaceutical care may not, for that reason, present an acceptable standard of health. Besides, the Government added that financial viability is generally not considered in assessing the medical condition of applicants since health care in New Zealand is accessible to all. As a result the Government does not rely on financial viability in its immigration policy.

217. New Zealand's approach to health assessment is the following. Visa applications for periods of less than one year require a declaration by the applicant as to their medical conditions. Any serious medical condition needs to be declared, but there is no specific reference to HIV status or provisions for HIV-positive applicants.

218. Applicants who intend to be in New Zealand for more than one year must provide a medical and X-ray certificate from a doctor who has been approved by Immigration New Zealand (INZ). The assessment covers current or previous health conditions including HIV/AIDS, tuberculosis, typhoid, hepatitis etc.

219. Where INZ becomes aware that an applicant applying for a temporary visa is not of an acceptable standard of health, it suggests that the applicants provide additional information prior to a decision on their application if they wish to. If upon receiving further information from the applicant, INZ still believed that applicant does not meet health criteria, the applicant will be advised of the options applicable to their situation. These options can be to either seek a medical waiver, if the applicant is eligible (HIV/AIDS status is irrelevant to eligibility to seek a waiver), or to request INZ to make an exception to the policy.

220. The waiver procedure is available to some family members of people residing in New Zealand and certain other categories of applicants. Medical waiver decisions are made in consultation with the applicant and medical assessors include several considerations, such as the degree to which the applicant would impose significant costs on New Zealand health services, the significance of the applicant's potential contribution to New Zealand, the length of the intended stay etc.

221. The Government added that HIV/AIDS applicants are treated in the same way as applicants with any other health conditions.

222. With regard to people having been granted asylum in New Zealand the Government indicated that they can benefit from a waiver to the requirement of an acceptable standard of health. New Zealand has however agreed with UNHCR that in resettling UNCHR-determined refugees in New Zealand, UNHCHR will request resettlement of such refugees who are HIV-positive to a maximum of 20 people each year out of a total of 750. This limit was created in order to maintain New Zealand's resettlement programme while also managing impacts on New Zealand's health services.

223. The Government also indicated that the Minister of Immigration has directed officials to undertake a review of immigration health screening settings, covering the threshold for being considered to be of an acceptable standard of health as well as some specific issues such as RSE applicants who are HIV positive.

224. With regard to individual complaints, the Government replied that it was not possible to comment on individual cases for reasons of privacy. However, immigration decisions are subject to rights of reconsideration, appeal and/or complaint, including where appropriate through the New Zealand courts and/or through administrative review procedures. Where complaints are upheld, remedies in such cases can involve the reversal of adverse decisions and other measures.

225. Finally, the Government of New Zealand outlined the steps taken to ensure the right the highest attainable standard of health for people living with HIV/AIDS. Firstly, New Zealand has express legal prohibitions against discrimination including on the grounds of

HIV/AIDS. Complaints of discrimination may be pursued through the New Zealand Human Rights Commission, through the Health and Disability Services Commissioner and/or, where necessary, through legal proceedings. In some cases publicly funded legal representation is available for such proceedings.

226. Secondly, extensive public health care, social assistance and other support is provided as necessary to people living with HIV/AIDS in New Zealand. Public spending on antiretroviral medication is significant. Peer support organisations also provide support and advocacy for people living with HIV/AIDS. A comprehensive review of services provided to people living with HIV/AIDS was completed in November 2010 and is available at www.moh.govt.nz. New Zealand also undertakes substantial health information campaigns through public funding of non-governmental organisations. Needle exchange programmes have been established to reduce infection amongst injecting drug users. The New Zealand Prostitutes Collective provides health promotion and support services for sex workers.

Observation

227. The Special Rapporteur thanks the Government for its response received on 28 February 2011.

Niger

Communication sent

228. Le **26 Juillet 2010**, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, conjointement avec le Rapporteur spécial sur les conséquences néfastes des mouvements et déversements illicites de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme a envoyé une lettre d'allégation **c**oncernant des mines d'uranium dans la région nord-ouest de la province d'Agadez pouvant avoir des effets nocifs ainsi qu'un impact continu sur la jouissance des droits économiques, sociaux et culturels des communautés affectées, particulièrement dans la région autour des villes minières d'Arlit et d'Akokan.

229. Il a été apporté à notre attention qu'autour des villes d'Arlit et d'Akokan, des méthodes d'exploitation ainsi qu'une mauvaise gestion de l'industrie minière d'uranium opérée par la société AREVA causeraient une pollution de grande envergure, endommageraient l'écosystème de manière définitive et pourraient également causer des problèmes de santé à la population locale. La pollution causée par l'industrie minière inclurait : la contamination de l'eau, l'épuisement des réserves des nappes phréatiques de la région ainsi que la contamination de l'air et du sol. Les effets de cette contamination incluraient également : la désertification accélérée et la réduction de la terre à pâturage, ainsi qu'une prévalence plus élevée des maladies respiratoires, leucémies, cancers et malformations à la naissance.

230. Spécifiquement, selon l'information reçue, les méthodes de l'exploitation minière contribueraient à la pollution de trois manières :

231. En premier lieu, le processus de lixiviation de l'uranium par lequel l'eau est utilisée quotidiennement pour séparer l'uranium du minéral, aurait déjà vidé plus de 270 milliards de litres d'eau de l'aquifère local et l'aurait entièrement épuisé dans quelques régions. La réduction d'approvisionnement en eau menace les communautés locales notamment les gardiens de troupeaux nomades, par la réduction des terres fertiles pour leur bétail. De plus, des puits d'eau ouverts et des mines d'uranium croisent l'aquifère ce qui, par conséquence, a causé la libération d'un haut niveau de matériaux radioactifs, entrant et circulant dans l'aquifère. Etant donné que l'aquifère est la première source d'eau potable, les risques sanitaires liés à la contamination peuvent augmenter. Les informations que nous avons

reçues indiquent qu'une majorité de puits identifiés contiennent une concentration de contaminants radioactifs dépassant la limite recommandée par l'Organisation Mondiale de la Santé (OMS) pour l'eau potable.

232. En deuxième lieu, il est à noter que la gestion du processus d'extraction se traduit par la libération et la propagation dans l'air de substances radioactives, et augmente les risques de contracter des maladies respiratoires. Le forage de mines, les détonations, les montagnes de boue et les déchets industriels - à ciel ouvert-, et la libération du gaz radon provoquent des nuages de poussière qui sont les premières sources de cette pollution. Ces polluants, accumulés dans le sol et à la surface des végétations, exposent la santé des habitants de la région à des risques liés à l'inhalation et à la consommation d'aliments issus de l'agriculture locale. Le taux des infections respiratoires dans les villes d'Arlit et Akokan serait deux fois plus élevé que la moyenne nationale. Par ailleurs, l'eau utilisée par les sociétés minières pour arroser les routes dans le but de contrer la poussière est contaminée par l'uranium. Ce dernier pourrait s'accumuler sur les routes.

233. En troisième lieu, la disposition des déchets et ferrailles métalliques contribuerait également à la pollution de la région. Les roches stériles restantes après l'extraction de l'uranium sont souvent laissées à l'air sur des piles où celles-ci pourraient émettre des contaminations et de la poussière dans l'environnement. De plus, les roches stériles seraient souvent utilisées pour la construction de routes locales, engendrant un niveau élevé de radiations dangereuses pour la santé. Finalement, la ferraille contaminée et l'équipement utilisé pour extraire le minerai d'uranium se trouveraient sur les marchés régionaux et poseraient un grave risque de santé à quiconque entrerait en contact avec ceux-ci.

234. En outre, il semblerait que la société minière AREVA et ses filiales n'informeraient pas leurs employés et la population locale sur les risques encourus par la proximité physique et par le travail autour des mines d'uranium. Spécifiquement, les employés et les sous-traitants engagés par la société multinationale, ne disposeraient que rarement de l'équipement de protection requis contre le rayonnement, comme des dosimètres ou des masques. De même, la population locale ne serait pas consciente du danger relié à l'exploitation des mines d'uranium.

235. Il a aussi été apporté à notre attention que la société minière AREVA et ses filiales ne réagiraient pas de façon appropriée aux accidents, tel que les déversements importants d'uranium lors de son transport, ce qui provoquerait par conséquence la contamination et la dégradation de l'écosystème. La compagnie responsable d'un accident dû au renversement d'un des camions qui transportait de l'uranium au Bénin, aurait pris plus d'un mois pour commencer les opérations de nettoyage.

236. Finalement, il a été rapporté que les anciens travailleurs ne seraient pas admis dans les hôpitaux des sociétés minières, notamment lorsque les maux dont ils souffrent peuvent avoir été causés par leur travail dans les mines. De plus, les hôpitaux ne disposeraient pas de médecins professionnels compétents pour traiter les maladies liées aux accidents de travail, et par conséquent il serait impossible de diagnostiquer un patient souffrant d'une maladie liée au travail, comme le cancer ou d'autres maladies liées à l'exposition au rayonnement. Les hôpitaux falsifieraient les statistiques des cas de cancer en prétendant qu'il s'agirait de cas de VIH ou de malaria afin de maintenir un taux bas de cancer dans les rapports des sociétés minières.

Observation

237. Le Rapporteur regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

Norway

Communication sent

238. On **22 March 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chair-Rapporteur of the Working Group on arbitrary detentions sent a joint urgent appeal regarding Mr. Leiv Hodne, born on 1 November 1980, currently confined at Oslo University Hospital, Ullevål, Psychiatric division, Acute unit, Post 5.

239. According to the information received: Since 15 January 2010, Mr. Leiv Hodne has been involuntarily committed to the psychiatric unit of Oslo University Hospital. He was retrieved by the police while sleeping in a hotel room, without being in any acute danger of his life or health.

240. Mr. Hodne has been diagnosed with OCD (obsessive compulsive disorder). While he develops a deep anxiety in certain situations, he has no history of violent or other disturbing behaviour of any kind, and has never been a threat or danger to himself or anyone else. He can take care of himself, but because of his anxiety and psychosocial disability he needs some accommodation and care to fulfill some basic needs, such as being able to eat and drink. Prior to his confinement to the hospital, he was eating and drinking on a daily basis and was in good physical health and well nourished, even though his life situation was rather difficult.

241. However, after the confinement, he was reportedly denied reasonable accommodation to eat and drink at the University Hospital. Because of the denial of such accommodation, he was this time totally without food and liquid for more than nine days, and lost more than 11.5 kilos in this period.

242. As a consequence, Mr. Hodne has been subject to different interventions which the medical personal of the hospital reportedly administrated due to “the need for medical treatment” and a “necessity due to an emergency situation”.

243. On 25 January 2010, ten days after his confinement, he was given water intravenously to prevent total dehydration, a situation that could very shortly have led to his death.

244. Since 2 February, Mr. Hodne has been force-fed by a tube in his nose. In the days preceding this, Mr. Hodne was able to drink nutritional drinks (yoghurt, juice, and soup). Mr. Hodne wanted to continue drinking on his own, but instead he was strapped down and the tube was inserted with physical force. His private doctor, Dr. Coucheron, stated in a letter to the Regional Board of Health Supervision, dated 2 February 2010, that “the forced feeding with a tube was carried through with the use of restraints and up to 10 health professionals holding the patient down while the tube was inserted into his stomach”.

245. The hospital staff members have increasingly restricted Mr. Hodne’s communication with the outside world. On 1 February 2010, the hospital confiscated Mr. Hodne’s telephone and denied him of all contact external to the hospital, with the exception of his lawyer. Mr. Hodne’s father is allowed to communicate with his son only through the attorney and the hospital staff.

246. On 17 January 2010, Mr. Hodne’s father reported the case to the police, alleging illegal deprivation of liberty, but the case was dismissed by the police authorities.

247. On 16 February 2010, a complaint to the Control Commission was filed by both Mr. Hodne and his father on the decision on deprivation of liberty (compulsory mental health care). On 22 February 2010, the Commission decided that Mr. Hodne will continue to be

kept under involuntary admission. The decision is now being taken to court. The case is pending and no date has yet been set for the trial.

248. Mr. Hodne was involuntarily committed to a psychiatric hospital for the first time on 2 July 2009 after he had asked for help and support from the health care system.

249. During the first psychiatric confinement, Mr. Hodne managed to escape from the hospital after seven days. For 16 days he and his father were on the run in Sweden, until Mr. Hodne was brought back to the hospital by the police 26 July 2009. He was released from the hospital 29 July 2009.

250. Concern was expressed at the involuntary commitment of Mr. Hodne to the University Hospital without his free and informed consent, the lack of provision of reasonable accommodation and the medical interventions applied.

Response received

251. On **22 December 2010** the Government of Norway replied to the joint urgent appeal sent on 22 March 2010. It sent Act No. 62 of 2 July 1999 relating to the provision and implementation of mental health care (the Mental Health Care Act), with later amendments. This legislation contains provisions regarding the professionals responsible for administrative decisions; the patient's right to a lawyer or other agent; consent (notably consent to being subject to the rules regarding compulsory mental health care); protection of personal integrity; contact with the outside world; and more. However, the Special Rapporteur regrets that no further information was provided regarding the personal situation of Mr. Hodne.

Observation

252. The Special Rapporteur thanks the Government for its response received on 22 December 2010.

Pakistan

Communication sent

253. On **2 July 2010** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an urgent appeal to the government of Pakistan regarding cessation of provision of HIV services to injecting drug users in Punjab.

254. According to the information received, the Punjab AIDS Control Program (PACP), a HIV prevention programme initiated by the Punjab Department of Health in four cities, allegedly had been discontinued. Many considered the PACP, which operated in a public-private collaboration with Nai Zindagi Trust, a regional best-practice example, including by the United Nations, World Bank and the Global Fund to Fight AIDS, Tuberculosis and Malaria. It allegedly had been successfully in preventing, halting and reserving the growing HIV epidemic in four cities of the Punjab, as evaluated by the Canada-Pakistan HIV/AIDS Surveillance Project, an independent programme supported by the Governments of Pakistan and Canada to monitor HIV prevalence and risk behaviours in Pakistan.

255. The PACP was allegedly the only HIV prevention programme for drug users that the World Bank was willing to support in Pakistan because of the quality of service provided through its interventions, which included syringe exchange services, health care, condom provision, treatment and prevention of sexually transmitted infections, counselling, drug treatment, and rehabilitation.

256. Between April 2009 to March 2010, Nai Zindagi Trust allegedly established such services in eight cities, and completed assessments to increase interventions in another four cities, providing services to over 14,000 clients. However, in May 2010, the contract to provide these services allegedly was terminated by PACP with no reasons given for the termination. It had been alleged that the primary reason for the termination was Nai Zindagi's refusal to provide personal details of its beneficiaries, in accordance with the contractual obligation of non-disclosure of personal details included in the initial agreement.

257. Allegedly, the World Bank had requested that the Secretary of Health of the Punjab Department of Health release payment for services rendered by Nai Zindagi, withdraw the cancellation of the contract, and cease requests for identifying information of beneficiaries. However, the cancellation allegedly remained in effect, despite repeated requests for reinstatement by the World Bank, and the Department of Health allegedly was maintaining its request to be provided with the personal information of beneficiaries of these programmes.

258. Despite allegedly not receiving payments for services already rendered, Nai Zindagi Trust continued to provide services in Punjab until May 2010, but since that time allegedly had discontinued providing services altogether.

Response received

259. On **6 July 2010,** the Government of Pakistan replied to the urgent appeal sent on 2 July 2010.

260. Firstly, the Government indicated that it considered that covering issues of routine/administrative nature did not fall within the mandate of the Special Rapporteur and that it was against the spirit of the mechanism of urgent appeals. The Government considered that urgent appeals were used in cases where the alleged violations were time-sensitive, life-threatening situations, which was not the case here.

261. Secondly, the Government reiterated its commitment to the obligations in the International Covenant on Economic, Social and Cultural Rights and to the right to the highest attainable standard of physical and mental health within available resources. It reminded the Rapporteur of its reservation to the aforementioned international covenant which states that Pakistan shall use all appropriate means to the maximum of its available resources with a view of achieving progressively the full realization of the rights recognized in the Covenant.

262. Thirdly, the Government added that even though they did not believe that the Special Rapporteur's mandate allowed him to comment or interfere in Pakistan's administrative issues, they would nevertheless request information on the case and keep the Rapporteur informed.

Observation

263. The Special Rapporteur thanks the Government for its response received on 6 July 2010.

Philippines

Communication sent

264. On **4 October 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Philippines concerning the publishing of photographs

of individual circumcisions of boys and young men by the nurses involved in the procedure on their personal websites.

265. According to the information received, a number of photographs retrieved from the Internet showed medical staff posing beside individual boys in the process of being circumcised. Some of the boys photographed were covering their faces to conceal their identities. Details of the photographs indicated that the circumcisions were conducted in a public place, possibly at schools. It was alleged that the pictures were taken and published on the Internet without the consent of the boys involved.

266. At the time, no further information was available on the locations, the persons involved or how widespread the publishing of pictures depicting health-related procedures on children was. Furthermore, information of whether or not the persons involved were public health workers were not available.

Observation

267. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

République démocratique du Congo

Communication sent

268. Le **15 novembre 2010**, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ont envoyé une lettre d'allégation au Gouvernement de la République Démocratique du Congo **c**oncernant une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblé nationale de la République démocratique du Congo.

269. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (…) [est] une menace à la famille (…), une déviation de la race humaine vers des relations contre nature (…) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

270. La proposition de loi visait à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portaient spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;
- selon l'article 174h2 de la proposition de loi, « [s]ont interdites… toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura crée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et

- selon l'article 174h3 de la proposition de loi, « [s]ont interdits… toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

Observation

271. Le Rapporteur regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

Russian Federation

Communication sent

272. On **25 June 2010,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an urgent appeal to the Government of the Russian Federation concerning the treatment of people living with HIV and tuberculosis who are undergoing drug dependency treatment at the Tuberculosis Clinic located at 37 Kamskaya St., Yekaterinburg, Sverdlovsk Oblast, Russia.

273. According to the information received, patients with HIV, tuberculosis (hereafter 'TB') and drug dependency undergoing treatment at the Tuberculosis Clinic in Yekaterinburg, Sverdlovsk Oblast, Russia were allegedly being mistreated in a number of ways. Allegedly, complaints had been submitted to the Ministry of Health of Sverdlovsk Oblast by civil society groups and individual patients.

274. Since the beginning of 2010, many basic necessities had allegedly not been provided to the patients. The food provision to patients of the hospital had allegedly worsened, so much so that the quality of nutrition did not meet the requirements for patients with HIV, TB, and other diseases. Additionally, for two weeks in April, there had been reportedly no hot water provision at the hospital. Heating had also allegedly been turned off for one week in the beginning of April.

275. Allegedly, there were no intensive therapy wards in the hospital, and no palliative care was available. Patients were also reportedly required to buy syringes and other medical equipment for medical procedures.

276. Effective in-patient TB treatment was practically impossible for people with HIV who were also dependent on opiates, because drug detoxification services were unavailable prior to TB treatment. Therefore, when patients checked into the hospital they were often in the state of opiate withdrawal, for which treatment was unavailable. Patients who repeatedly left the hospital in order to procure illicit drugs allegedly risked being discharged before the end of treatment because of disciplinary sanctions. According to standards of drug treatment, approved by the Ministry of Health of the Russian Federation, an opiate analgesic Tramadol can be prescribed for such treatment. However, it wass reportedly not available in the TB clinic. Internationally recommended opioid substitution therapy with methadone and buprenorphine is illegal in the Russian Federation, and therefore was not provided in the clinic.

277. Moreover, it was alleged that people living with HIV and TB had not received 2nd line medications for treatment of drug-resistant TB. Allegedly, no additional medicines had been provided in the hospital (for example, supportive liver therapy, as many people with HIV and TB also have hepatitis C virus: 'HCV'). Generally in Oblast, international minimum standards of hepatitis C treatment with pegylated interferons and ribavirin were not available.

278. Additionally, there were allegedly no infectious disease consultants or drug treatment specialists working in the TB hospital, so their services were unavailable for

people with co-morbidities. For instance, patients with HIV who received inpatient treatment in the TB hospital allegedly were not referred to an infectious diseases consultant for management of their HIV, and were not afforded testing for their immune status and viral load. Patients on HIV antiretroviral treatment at the time allegedly could not receive their necessary medication within the TB hospital. Therefore patients, even with active forms of TB or other life-threatening illnesses, reportedly had to travel to the AIDS center for their monitoring, consultations, and anti retroviral drugs.

279. There was also reportedly no social worker at the TB hospital. Their assistance was crucial, since many patients allegedly came from marginalized groups, including ex-prisoners and populations using drugs, and lack documents and housing. Therefore, after treatment, many patients found themselves out on the streets, where their health condition worsened and effective treatment became impossible due to social factors.

280. Following submissions of the complaints to the Ministry, civil society groups organized a press conference where the chief doctor of TB service, Igor Zykov, and chief doctor of the AIDS service, Anjelika Podymova, were allegedly present. Subsequently, the water supply was allegedly restored at the hospital, and patients were promised that tests for immune status and viral load would be provided within the hospital, and antiretroviral medicine would be made available within the hospital.

281. Reportedly, around the same time in April 2010, the hospital administration made a decision to make the hospital a 'closed' facility, which allegedly meant that patients were not allowed to leave the hospital building for the duration of treatment (90 days in average), and were kept in detention-like conditions. Previously, people who were dependent on drugs could leave the hospital and acquire drugs. Now, approximately 15 patients in this closed facility were allegedly experiencing withdrawal syndrome and did not have access to any drug dependence treatment, and had been warned that should they violate the treatment regimen, and leave the hospital, they would not be allowed to return to the treatment facility and would be left without care.

282. Additionally, the hospital administration allegedly harassed patients, including those experiencing active drug withdrawal syndromes, and coerced them into writing letters to the Oblast Ministry of Health to withdraw their previous complaints.

Observation

283. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

284. On **23 December 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of the Russian Federation regarding interruptions in anti-retroviral (ARV) treatment of nineteen people living with HIV/AIDS and an extreme shortage of essential ARV drugs across the Russian Federation in 2010.

285. According to the information received, it was alleged that nineteen Russian citizens from eight regions living with HIV/AIDS suffered from interruptions in their ARV treatment due to unavailability of drugs in 2010. It was also alleged that there had been major, documented delays in delivery and shortage of essential ARV drugs in health-care facilities in Arkhangelsk, Kaliningrad, Moscow, Moscow Region, St. Petersburg, Samara, Saratov, Tula, Ulyanovsk, Vladimir and other regions of the Russian Federation. It was further alleged that interruptions in ARV treatment of one month or longer were reported in fifteen prisons.

286. Reportedly, despite the interruptions in ARV treatment and the resulting changes in treatment regimen, the official statement from the Ministry of Health and Social Development of 16 September 2010 denied that shortages in drugs were evident in most of the regions of the Russian Federation.

287. It was also alleged that people who used drugs were required to go through more complicated procedures to begin receiving ARV treatment, and that, in some cases, persons who did not receive treatment were incarcerated, often for the use of drugs.

Observation

288. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Communication sent

289. On **23 December 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of the Russian Federation concerning the prohibition of access to effective methods of drug treatment.

290. According to the information received, it was alleged that drug-dependence treatment programs in penitentiary, public and private health facilities in the Russian Federation required immediate and permanent cessation of drug use, which had proved to be ineffective in many cases, impeding long-term rehabilitation of persons who used drugs. It was alleged that persons who used drugs were continuously denied Opioid Substitution Treatment (OST). It was further alleged that the unavailability of OST had prevented those persons from accessing and using the effective method of treatment against drug dependence and led to the deterioration of their state of health.

291. Reportedly, in many cases, due to the provision of ineffective treatment and the resulting relapses after such treatments, persons who used drugs were imprisoned for committing drug-related offences. During those terms in prison, they allegedly underwent compulsory drug-dependence treatment but tended to relapse almost immediately after release from prison.

292. As a result of unsafe injecting drug use, persons who used drugs could contract Hepatitis C and HIV/AIDS. It was alleged that the absence of OST to drug-dependant patients, who were treated for Tuberculosis, Hepatitis C and HIV, often forced them to break their regiment to avoid withdrawal, resulting in their expulsion from treatment programmes.

Observation

293. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Syrian Arab Republic

Communication sent

294. On **18 March 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the Independence of Judges and Lawyers sent a joint urgent appeal to the Government of the Syrian Arab Republic regarding Mr. Haithem al Maleh, 78 years old. Mr. al Maleh has

been a lawyer since the 1950s and in 2001 established the Human Rights Association in Syria (HRAS). Mr. al Maleh was the subject of two urgent appeals by several special procedures on 21 October 2009 and 23 February 2004.

295. According to the new information received,during Mr. al Maleh's incommunicado detention at the General Security building (see previous communication of 21 October 2009), he was detained in a room without food or drink and in which a number of torture tools were displayed. There, he was reportedly subject to an inquiry by high ranking officers of the General Intelligence, who questioned him extensively on an interview he gave to Barada TV on 12 October 2009 and articles he had written regarding his client Mr. Muhannad Al-Hassani, as well as other human rights work he had undertaken.

296. On 19 October 2009, Mr. Haithem al Maleh was transferred to a branch of the Military Police in Qaboun, Damascus. On 3 November 2009, the Military General Prosecutor charged him with Articles 374 and 377 of the Criminal Law (Contempt of the Head of State"), Article 285 of the Criminal Law (Contempt of Public Administration), and Article 286 of the Criminal Law (Crime of disseminating false information affecting the morale of the nation). The military prosecution subsequently retained the charge under Article 286 of the Criminal Law, for which Mr. al Maleh remained in detention. According to the information received, his trial before the Military Court of Damascus was ongoing.

297. Since 21 October 2009, Mr. al Maleh had been detained in Adra prison, Damascus. Information received suggested that in the first few weeks of his detention and again since 11 February 2010, Mr. al Maleh, who suffered from diabetes and an overactive thyroid gland, had been refused his medication as prescribed by his doctors, causing a serious deterioration of his state of health. Reports received suggested that during his hearing before the military judge on 22 February 2010, Mr. al Maleh was so weak that he could hardly speak. In addition, he had fainted during hearings earlier in February.

298. Mr. al Maleh was detained in a cell with approximately 60 people. The cell did not contain any beds, simply mattresses on the floor, which were shared by several detainees. Water in the prison was often cut off, meaning the detainees could not wash for long periods and had to use the toilet without any water – leading to serious health risks.

Response received

299. On **1 April 2010** the Government of the Syrian Arab Republic replied to the urgent appeal sent on 18 March 2010. It expressed its willingness to work with the Office of the High Commissioner for Human Rights and mandates holders in pursuit of the shared goal of preventing human rights violations across the world.

300. It explained that Mr. Al-Maleh had been arrested by the competent authorities for committing unlywful acts which are punishable under the Syrian General Criminal Code. His arrest had nothing to do with his defending Mr. Al-Hassani. Mr. Al-Hassani had a number of lawyers for acting as his legal representative and defence team. None of these persons had been arrested for defending Mr. Al-Hassani. The Government stated that it fully respected the the legal practice of defending accused persons in court.

301. The Government also expressed its concerns about the sources having sent the information leading to the drafting of the urgent appeal by the Special Rapporteur. The Government of the Syrian Arab Republic considered that most of these sources had no other aim but to damage the good name of state by submitting false information and making unfounded allegations about it.

302. The Government sent recalled the different steps of Mr. Al-Maleh's case, indicating that Mr. Al-Maleh's case file has been sent to the chief military investigating judge in Damascus, who had interviewed Mr.Al-Maleh about the allegations and confronted him

with the evidence submitted by the Office of the Prosecutor. The judge issued a decision, which was open to appeal at cassation. Mr. Al-Maleh appealed the decision through his defence lawyer. The appeal was lodged with the criminal division of the Syrian Court of Cassation, which is the highest court in the Syrian Arab Republic and has the final say.

303. Mr. Al-Maleh could exercise his full rights as a member of the Syrian society, including his right to freedom of expression and opinion. However, any citizen who stepped over the internationally recognized limits on the right to freedom of expression by inciting others, stirring up fear, undermining national unity and the prestige of the state and defaming the judiciary shall be deemed to have committed a criminal act punishable under Syrian law. The Government added that the laws of the Syrian Arab Republic were in conformity with all international treaties and norms. It assured that the country had a firmly established judiciary with judges who were impartial and had full authority in the exercise of their functions.

304. Subsequently the Government of the Syrian Arab Republic provided categorical assurance that Mr. Al-Maleh was receiving appropriate medical treatment and care in prison at the hands of the prison doctor. Should he or any other prisoner need medical care, the competent prison administration responsible for protecting prisoners' welfare would make sure they are given a physical examination. This was in line with the values and cultural heritage of the country, which required to provide prisoners with full humanitarian and health care, irrespective of the obligations set our in the relevant international treaties by which the country was bound.

Observation

305. The Special Rapporteur thanks the Government for its response received on 1 April 2010.

Communication sent

306. On **25 November 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the chairman of the Working Group on arbitrary detentions sent a joint urgent appeal to the Government of the Syrian Arab Republic regarding the situation of Mr. Amro Okleh, a writer and a political activist, who worked as a government employee at the "Board of Control and Inspection" of Al Hassaka, the Syrian Arab Republic. Mr. Amro Okleh was a member of the Damascus Declaration for national democratic change and the author of a number of articles published in the Syrian press. Mr. Okleh was married with two children and lived in the Syrian Arab Republic.

307. According to the information received, on 15 November 2010, Mr. Okleh, aged 46, was allegedly arrested by agents of the State Security Services. It was reported that the security agents did not present any judicial warrant, nor did they explain the reason for Mr. Okleh's arrest. They reportedly raided Mr. Okleh's home and confiscated various personal belongings, including his mobile phone, a laptop and a computer.

308. It was reported that Mr. Okleh was subsequently taken to the Security State Services branch in Al Kameshli where he was being held in incommunicado detention. It was further reported that Mr. Okleh had not been allowed to see his family, nor had he been provided with medical treatment, despite his serious health condition. Mr. Okleh had reportedly been suffering from cardiac condition and heart disease.

309. Given that Mr. Okleh continued to be allegedly held incommunicado, concern wass expressed about his physical and psychological integrity. Further concern was expressed

that the arrest and subsequent incommunicado detention of Mr. Okleh may have beem related to his peaceful and legitimate political activities, particularly his recent activities linked to publishing in the local media.

Observation

310. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Tajikistan

Communication sent

311. On **17 February 2011**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the Independence of Judges and Lawyers sent a joint urgent appeal to the Government of Tajikistan concerning the detention and state of health of Mr. Ilhom Ismanov.

312. Mr. Ismanov had been the subject of a joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 19 November 2010. In view of the allegations of torture and lack of medical attention, concern had been expressed about the physical and psychological integrity of Mr. Ismanov. Further concern had been expressed about the lack of investigation into the allegations of torture. To date, no response had been received from the Tajikistan Government regarding the circumstances of the case of Mr. Ismanov.

313. According to the new information received, in mid-November 2010, Mr. Ismanov had been transferred to a pre-trial detention facility in Khujand, Tajikistan. It wss further reported that Mr. Ismanov's lawyer had been able to see him on 20 November 2010 for the first time since the court hearing of 12 November 2010. However, she had reportedly not been able to meet him in private. Mr. Ismanov's wife had reportedly been allowed to see him briefly in the presence of officers from the State Committee of National Security. It was reported that Mr. Ismanov had difficulty walking and looked frightened. Reportedly, neither the lawyer nor Mr. Ismanov's wife had been able to obtain any information as to whether an investigation had been launched into the torture allegations and the allegation that Mr. Ismanov had been detained since 3 November 2010 and not since 9 November 2010 as stated by the police.

314. It was alleged that Mr. Ismanov had a serious respiratory disease and urgently needed medical examinations, in particular an x-ray of his chest, in order to administer the appropriate treatment. It was reported that SIZO no.2 was not equipped with adequate medical facility to establish Mr. Ismanov's diagnosis and devise a plan for his treatment. It was also alleged that the prison administration of SIZO no.2, where Mr. Ismanov was detained, requested his family to provide medicine for him on several occasions.

315. In view of the allegations according to which Mr. Ismanov continued to remain with no access to medical care despite his deteriorating state of health, concern was expressed about the physical and mental integrity of Mr. Ismanov. Further concern was expressed about the lack of investigation into the allegations of torture.

Observation

316. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Turkey

Communication sent

317. On **21 April 2010** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairman of the Working Group on arbitrary detention sent a joint urgent appeal to the Government of Turkey regarding Mr. Murad Akincilar, born in 1962, secretary of the labour union UNIA at Geneva and political refugee in Switzerland.

318. According to the information received, on 30 September 2009, at 8 a.m., Mr. Murad Akincilar was arrested by police in Istanbul, where he wanted to visit his sick mother. He was held and interrogated at length numerous times in a police lock-up in Istanbul until 4 October 2009. He was then transferred to Metris Prison (Istanbul) and later to Edurne Prison, 300 km north of Istanbul, where he was being detained without charges.

319. Mr. Murad Akincilar had not been provided with any information on the crime he was suspected of, nor had he received an official indictment. This situation rendered it difficult for him to defend himself or challenge his detention. It appeared that his detention may have been based on political motives, since he had published two articles in a journal critical of the Government ("Demokratik Dönüsüm"), and had been politically active in an organisation named "Devrimci Karagât".

320. In the course of the interrogations at the police in the beginning of October 2009, he had allegedly been deprived of sleep on numerous occasions and had been a number of times forced to look into extremely bright lights. Due to this treatment, it was reported that Mr. Murad Akincilar was loosing his eyesight because of retinal detachment. He had started encountering problems with his eyesight on 11 October, while detained in Metris Prison. However, the responsible officials allegedly refused to grant him medical care. During his transfer from Metris to Edurne Prison over a distance of 300 km he was reportedly shackled with chains; a week after the transfer, his wife could still observe that his legs were swollen and that he bore serious haematoma. On 16 October 2009, Mr. Murad Akincilar went on hunger strike, demanding urgent medical consultation for his eyes, which was eventually granted the same evening. Despite two belated operations on his eyes, he had already lost 65% of his eyesight of his right eye. On 26 March 2010, a further retinal detachment in his left eye was diagnosed and he again underwent surgery.

321. Concern was expressed regarding the physical and psychological integrity of Mr. Murad. With a view to his rapidly deteriorating eyesight, particular concern was expressed at the conditions of detention and the lack of medical care.

Observation

322. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Ukraine

Communication sent

323. On **14 February 2011,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of Ukraine concerning interference by law enforcement agencies with substitution maintenance therapy in Ukraine.

324. According to the information received, more than 6,000 drug dependent patients were receiving substitution maintenance therapy in 125 treatment facilities in Ukraine, and that the provision of that treatment remained an integral part of Ukraine's HIV/AIDS prevention programmes.

325. It was alleged that the provision of substitution maintenance therapy to drug-dependent patients in Ukraine had been severely hampered by the interference and inspections into patients' confidential data, initiated by the officials of the General Public Prosecutor Office, the Ministry of Internal Affairs and other inspection agencies. It was further alleged that the Drug Enforcement Department of the Ministry of Internal Affairs of Ukraine had issued an order No. 40/2/1-106 of 18 January 2011, which instructed heads of territorial units to collect personal and health-related information from drug users receiving substitution maintenance therapy. As a result, law enforcement officers had allegedly requested information from treatment facilities on their patients and had put pressure on patients and their relatives to participate in interviews and surveys.

326. Concern was expressed about the reports of the negative and counter-productive impact that the alleged actions by the law enforcement agencies were having on the important progress achieved so far in HIV/AIDS programme and substitution maintenance therapy in Ukraine.

Observation

327. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

United Kingdom of Great Britain and Northern Ireland

Communication sent

328. On **4 May 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on Contemporary forms of slavery, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on violence against women, its causes and consequences sent a joint urgent appeal to the Government of the United Kingdom of Great Britain and Northern Ireland regarding Ms. Bita Ghaedi, a rejected asylum-seeker who was a national of Iran. Ms. Bita Ghaedi had exhausted most of the legal remedies available and allegedly received a deportation order to leave the United Kingdom of Great Britain and Northern Ireland on 20 April 2010.The deadline was postponed due to flight disturbances. Her deportation was rescheduled to take place on 5 May 2010 at 19.00 hrs by flight BD931. In the meantime an additional fresh claim for review of her case was submitted by her solicitor on 20 April 2010. The judicial review of the fresh claim submitted was scheduled to take place on 21 July 2010.

329. According to information received, Ms. Bita Ghaedi, a national of Iran born on 10 September 1974, allegedly fled Iran escaping from a forced marriage. She allegedly

arrived in the United Kingdom on 2 October 2006. Upon her arrival in the United Kingdom, she claimed asylum on grounds of forced marriage in Iran. She had reportedly been forced into the marriage by her father in 2004 and remained in the forced marriage for approximately 2 years until she fled Iran. In addition, she allegedly faced physical and psychological maltreatment by her father, brother and uncle because she was having an extramarital affair with Mr. Hamid Saedi. After filing her asylum claim, Ms. Ghaedi was reportedly taken to Holloway prison for 45 days after which she was released for the consideration of her asylum claim. The reason for her detention was never clarified.

330. In November 2006, Ms. Ghaedi reportedly met Mr. Mohsen Zadshir, a British national with whom she began an informal domestic partnership in October 2008. As a result of her relationship with Mr. Zadshir, in 2007, Ms. Ghaedi become involved in political activities and began working as a political activist with Anglo-Iranian women in the United Kingdom. She also became a supporter of the British Peoples Mojehadin Organization of Iran (PMOI) and the National Council for the Resistance of Iran (NCRI). Ms. Ghaedi campaigned on behalf of the PMOI in the United Kingdom of Great Britain and Northern Ireland to draw attention to the situation of political prisoners and the execution of victims in Iran during a recent unrest.

331. On 16 August 2007, Ms. Bita Ghaedi's asylum claim was rejected by the Home Office and by the Court on 16 October 2007. As a consequence, on 4 December 2007, she attempted to commit suicide by taking an overdose, and was hospitalized. She was allegedly unconscious for three days and was discharged from the hospital on 2 January 2008. Her solicitor requested a revision of the case.

332. On 29 April 2009, she was allegedly detained and removal directions were set for 4 May on the grounds of her immigration status. On 3 May, Ms. Bita Gaedhi's solicitor submitted an application for a leave to remain and she was released on 17 June 2009 as her case was accepted for judicial review. She was allegedly detained again on 11 November 2009 and removal directions were set for 16 November. On the same date she reportedly began a hunger strike. On 16 November 2009 she was taken to Heathrow airport for deportation, but the deportation was cancelled by judicial order allegedly on the grounds of the need for further time to review the case. On 2 December 2009 she was allegedly released on bail, conditional upon her presentation twice a week before the United Kingdom Border Agency (UKBA).

333. In January 2010, the UKBA authorities allegedly fixed 16 April 2010 as the date for the review of the conditions of her release. On 27 January 2010, she allegedly commenced another hunger strike after she was informed by Home Office solicitors that her claim had been rejected.

334. Given the health troubles associated with her hunger strikes, she was allegedly unable to comply with the condition of her release. Mr. Mohsen Zadshir periodically provided medical certificates to the UKBA to justify that it was impossible for Ms. Ghaedi to comply with the condition of her release. The most recent medical certificate was dated 23 March 2010 and justified one month of sick leave. Her physical and mental health was weakened considerably to the point that she was unable to walk. Following friends' and medical practitioners' advice, she allegedly ended her hunger strike on 20 March 2010.

335. On 25 March 2010 Ms. Ghaedi's solicitor submitted a fresh claim, as the United Kingdom asylum procedure permits rejected asylum applicants to lodge a fresh claim and give the Government the prerogative of deciding whether or not the fresh submission is to be considered.

336. On 12 April 2010, Mr. Zadshir brought Ms. Ghaedi to UKBA authorities in a wheelchair, in order to bring her health condition to their attention, and present a request for the renewal of her release on bail, which was to be reviewed by 16 April 2010. UKBA

authorities requested Mr. Zadshir and Ms. Ghaedi to return in the afternoon of 16 April 2010.

337. On 16 April 2010 around 6:30 a.m., Home Office authorities allegedly arrived at Ms. Ghaedi's place of residence with an ambulance, arrested her and detained her at Yarl's Wood. Mr. Zadshir reported that her health remained a concern while she was in detention.

338. Additional documentation was submitted to the Home Office by Ms. Bita Ghaedi's solicitor on 20 April 2010, who according to Mr. Zadshir was going to submit an application for urgent injunction to request to suspend Ms. Ghaedi's removal from the United Kingdom scheduled on 5 May 2010 pending the consideration of the judicial review of the fresh claim, which was scheduled to take place on 21 July 2010.

339. Her forcible removal from the United Kingdom was initially planned for 20 April 2010, but was postponed due to flight cancellations. Her deportation has been rescheduled to take place on 5 May 2010 at 19.00 hrs by flight BD931.

340. Information received indicated that, if returned to Iran, M. Ghaedi might be subjected to cruel, inhuman or degrading treatment as a result of having abandoned a forced marriage and because of the resulting implications on family honour. Information received also suggested that, if returned to Iran, Ms. Ghaedi might encounter harassment, arrest or detention because of her political involvement with the PMOI while in the United Kingdom. Furthermore, her health might be at risk as her physical and psychological condition had considerably deteriorated, at least partly due to the possibility of being deported to Iran. Additionally, she considered that her rights to family and private life with her partner Mr. Zadshir, who was a British national, might also be infringed.

Observation

341. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

United States of America

Communication sent

342. On **24 September 2009,** the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the Government of the United States of America concerning the use of the Special 301 Program, Section 182 of the Trade Act of 1974

343. It was alleged that the United States had used the United States Trade Representative (USTR) Special 301 Program to promote intellectual property regulations that restricted access to affordable medications around the world. Since its creation in 1988, the Special 301 Program has published an annual report that includes a list of countries denying “adequate and effective protection of intellectual property” and has permitted the unilateral imposition of trade sanctions against such countries. It was alleged that the Special 301 review process was used to pressurize States into compliance with U.S. intellectual property policy, irrespective of whether their existing practices were legitimate and legal under international law. This, in turn, allegedly forced affected States to change their internal practices, limiting generic medicine production and, thereby, restricting access to essential medicines and infringing the enjoyment of the right to health.

344. Furthermore, it was alleged that the use of Special Program 301 to promote intellectual property regulations that restricted access to affordable medications causes suffering around the world. This was allegedly demonstrated by the selective inclusion of access-limiting calls for additional intellectual property protection in the Special 301

reports. The negative impact of increased intellectual property protections was illustrated generally by a number of independent reports produced by Oxfam ("All costs, no benefits: How TRIPS-Plus intellectual property rules in the US-Jordan FTA affect access to medicines"), Georgetown University (A prescription for failure: Health and intellectual property in the Dominican Republic"), and a US House of Representatives report on Trade Agreements and Access to Medications under the Bush Administration on trade and intellectual property.

345. It was reported that subsequent to the TRIPS agreement, the United States used the Special 301 Program to press many countries to relinquish their rights to use TRIPS flexibilities, including compulsory licenses (i.e., authorization to use a patent in return for compensation) and “parallel imports” to obtain less expensive versions of patented drugs from other countries endangering HIV/AIDS and other disease treatment programmes. Even after the Doha Declaration of 2001 on TRIPS and Public Health, several countries, including Brazil, India and Thailand, were allegedly placed on Special 301 watch lists and threatened with sanctions for making use of TRIPS flexibilities, including utilizing transition periods and issuing compulsory licenses.

346. It was alleged that the United States Government continued to pressure countries to adopt escalating intellectual property rules for medicines despite a pledge to support “the rights of sovereign nations to access quality-assured, low-cost generic medication to meet their pressing public health needs” made by President Obama during his presidential campaign.

347. The 2009 and 2010 Special 301 reports listed a number of complaints concerning “lack of protection against unfair commercial use of undisclosed test and other data.” In 2010, 15 countries were cited for lack of adequate pharmaceutical data protection (Algeria, Argentina, Brazil, Chile, Dominican Republic, Egypt, India, Indonesia, Lebanon, Malaysia, Mexico, Pakistan, Paraguay, Turkey and Vietnam), although data protection of the type sought for by the US for pharmaceuticals was not required under the TRIPS Agreement. Countries such as Thailand allegedly remained on the 2010 list for its TRIPS-compliant use of compulsory licenses for medicines needed to treat AIDS and other diseases, which was permissible under the TRIPS Agreement. In both the 2009 and 2010 reports, Brazil, India and the Philippines were criticized for laws that banned patents on new forms and used of known inventions, which were permissible under the TRIPS flexibilities, pushing those countries to grant patents on a larger range of innovations than required by TRIPS.

348. The 2009 and 2010 reports also warned against the use of “counterfeit” pharmaceuticals without giving a clear definition to the term. Under TRIPS, “counterfeit” referred to a product that wilfully deceives consumers by using an identical mark to the originator. It was not correctly applied to an allegedly unauthorized generic version of a patented product or to lesser forms of trademark infringement that did not use identical marks. The reports frequently alleged concerns with “unauthorized use of bulk active pharmaceutical ingredients” by manufacturers in Brazil, China and India. But the reports allegedly failed to identify who determined that these uses were unauthorized. The proper mechanism for enforcing a patent and determining if a particular use was in fact a violation is through civil litigation. The Special 301 reports supposedly cited no such litigation.

349. In all of these cases, it was alleged that the use or threat of sanctions by the United States Government resulted in changes in the behaviour of the affected State in a manner that restricted access to medicines. As an example, it was alleged that the placement of Thailand on the 2007 Priority Watch List deterred the country from granting additional compulsory licenses for necessary medicines limiting access. It was similarly alleged that pressure on countries to adopt data-protection provisions not required by TRIPS through the Special 301 Program, in conjunction with including such provisions in free trade agreements, resulted in adoption of these provisions, and thereby higher-priced medicines

throughout Central America. Many additional instances of such changes in state behaviour were also reported.

350. Moreover, it was alleged that Special 301 Program had been used to take unilateral action against non-complying countries in the form of elevated, retaliatory tariff barriers, not only through threat of sanction.

Observation

351. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted a reply to his communication.

Uzbekistan

Communication sent

352. On **11 May 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint allegation letter to the Government of Uzbekistan concerning the sentencing of Mr. Maxim Popov, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

353. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

354. It was believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov was the author of the brochure “HIV and AIDS today”, a publication funded by UNAIDS and UNICEF. He was also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly refered to drug use, sex work and homosexuality.

355. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS prevention.

Response received

356. On **30 June 2010**, the Government of Uzbekistan replied to the joint allegation letter sent on 11 May 2010. It provided information on IZIS and on Mr. Popov.

357. With regard to IZIS, the Government indicated that in the course of the checks conducted to ensure that the aims of the organisation were in accordance with the law, it was found that the requirements of the statute had been breached and that there had been violations of Uzbek law, some of them of a criminal nature. The materials of the verification process were handed over to the public prosecutor’s office and criminal charges were brought against IZIS. The criminal court found Mr. Popov to be guilty and subsequently the Tashkent Civil Court accepted the application for IZIS to be dissolved.

358. Concerning Mr. Popov, the Court ruled that he had abused his official position as director of IZIS by embezzling large sums of money that were supposed to be used for projects related to IZIS. Notably, Mr. Popov and his chief accountant Mr. Kostyuchenko, embezzled funds provided by UNICEF regional office, UNDP, the Regional Management Board of the Central Asia AIDS Control Project etc. Besides, Mr. Popov misappropriated material goods placed in his charge, of a total value of a 193,100 sum.

359. The Government added that Mr. Popov distributed a book in Uzbek education establishments attended by schoolchildren and students engaging in academic, sporting or communal activities, which promoted the use of narcotic drugs and antisocial behaviour among the young. The Government considered that Mr. Popov was well aware of the nature of the book's content. The book contained texts instructing young people of sexual activities and propaganda for homosexuality, pornography and pornographic images.

360. As a result Mr. Popov was found guilty and sentenced to seven years imprisonment and stripped him of the right to hold any office involving the direction of an organization or economic administration for two years.

Observation

361. The Special Rapporteur thanks the Government for its response received on 30 June 2010.

Venezuela (Bolivarian Republic of)

Communication sent

362. El **27 de julio de 2010** el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental junto con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes envió un llamamiento urgente al Gobierno de Venezuela en relación con la situación de la Jueza María Lourdes Afuini, la cual se encuentra detenida en el Instituto Nacional de Orientación Femenina (INOF) desde el 18 de diciembre de 2009 en espera de ser juzgada.

363. La Sra. María Lourdes Afiuni ha sido objeto de dos llamamientos urgentes, el último de ellos enviado por el Relator Especial sobre las ejecuciones extra-judiciales, sumarias y arbitrarias; la Relatora Especial sobre la independencia de magistrados y abogados; y la Relatora sobre la situación de los defensores de los derechos humanos de fecha 1 de abril de 2010. Hasta el día de hoy no se ha recibido respuesta.

364. Según las informaciones recibidas, el estado de salud de la Jueza María Lourdes Afuini se habría deteriorado considerablemente durante los últimos meses. Según informes médicos esto se debería tanto al estado de ansiedad permanente por las constantes amenazas y ataques de los que habría sido víctima desde su ingreso en el mencionado centro penitenciario, como a las condiciones de detención que estaría soportando.

365. Debido a las repetidas amenazas y ataques, desde su ingreso en el centro penitenciario hace siete meses, la Jueza Afuini se encontraría confinada en una celda del pabellón de admisión del centro penitenciario aislada las 24 horas del día sin poder salir a caminar, sin tener acceso a la luz del sol y sin poder asistir al servicio religioso ofrecido por el centro.

366. Según las informaciones recibidas, la salud de la Jueza Afuini se habría deteriorado durante los últimos meses durante los cuales se habrían detectado lesiones e irritaciones cutáneas, falta de coordinación motora y visual así como síntomas de un cuadro ansioso-depresivo. Recientemente se le habría diagnosticado un tumor que requeriría atención médica especializada.

367. El 23 de abril de 2010, la Jueza María Lourdes Afuini habría solicitado su traslado de a otro centro penitenciario donde su seguridad pueda ser garantizada y donde pueda disfrutar de mejores condiciones de detención.

368. Se expresa grave preocupación por la seguridad y por la integridad física y psicológica de la Sra. María Lourdes Afuini. Las alegaciones acerca de las condiciones detención de cuasi-aislamiento que estaría soportando, de ser confirmadas, y debido a su prolongación en el tiempo, podrían constituir trato cruel, inhumano o degradante. Se expresa asimismo preocupación por el estado de salud de la Jueza María Lourdes Afuini y por las alegaciones de considerable deterioro durante los últimos meses.

Observation

369. El Relator Especial lamenta que al finalizar este informe, no se había recibido una respuesta a la comunicación del 27 de julio de 2010.

III. Others

AREVA

Communication sent

370. Le **5 août 2010**, le Rapporteur spécial sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible, conjointement avec le Rapporteur spécial sur les conséquences néfastes des mouvements et déversements illicites de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme**,** a envoyé une lettre d'allégation à l'entreprise Areva au sujet des mines d'uranium au Niger, dans la région nord-ouest de la province d'Agadez qui pouvaient probablement avoir des effets nocifs ainsi qu'un impact continu sur la jouissance des droits économiques, sociaux et culturels des communautés affectées, notamment en ce qui concernait la région autour des villes minières d'Arlit et d'Akokan. À cet égard, le rapporteur spécial souhaitait partager avec Areva ses préoccupations en la matière et a transmis à l'entreprise le contenu des allégations partagées avec le Gouvernement du Niger (cf. communication envoyée au Gouvernement du Niger).

Response received

371. Le **3 décembre 2010**, l'entreprise Areva a répondu à la communication envoyée le 5 Août 2010. Par sa réponse exhaustive, l'entreprise Areva a souhaité clarifier les allégations portées à l'attention du rapporteur spécial et démontrer que l'entreprise remplissait largement ses obligations d'entreprise. Le groupe a considéré que les allégations semblaient être sans fondement documenté. En effet, Areva effectue une surveillance continue et exhaustive autour de ses installations et s'assure de protéger les populations locales, la santé de ses travailleurs et l'environnement. Le groupe a cité les textes de référence encadrant ses obligations légales, à la fois au niveau national (Niger) et international. De plus, le groupe a cité un nombre de mesures prises afin de veiller au respect des droits de l'homme des populations locales et au respect de l'environnement.

372. Chaque entité opérationnelle d'AREVA s'est dotée de Plans d'Intervention d'Urgence. Le groupe détaille dans sa réponse à titre d'exemple le plan d'urgence des transports de matières radioactives, processus se déployant en quatre phases. AREVA apporte également son aide aux populations lors de besoins d'approvisionnement alimentaire d'urgences. L'entreprise apporte un soutien continu aux Nigériens lors de chacune de ces crises. De plus, le groupe AREVA a mis en place une organisation en

charge des questions de sureté, sécurité, santé et environnement qui lui permet de définir des standards internes, de soutenir les actions des entités opérationnelles et de les contrôler. AREVA dispose également d'un dispositif de l'impact radiologique de ses activités sur l'environnement et les populations sur les sites miniers d'Arlit et d'Akokan.

373. Dans un souci de transparence sur l'impact de ses activités, AREVA s'est engagé aux cotés de deux ONG françaises pour la création d'un Observatoire de la Santé sur tous les sites miniers.

374. Dans le cadre de ces observatoires, AREVA s'engage à réparer et à traiter les maladies s'il est avéré que celles-ci sont dues à l'activité minière. AREVA a en outre récemment décidé de mener une Evaluation des Impacts sur la Santé pour tous ses nouveaux projets miniers.

375. Le groupe a expliqué qu'il mettait un accent croissant sur la responsabilité sociale et sociétale de ses filiales minières, ce qui constitue pour AREVA une condition préalable à une bonne gestion des risques, en particulier pour les droits de l'Homme. AREVA a créé en juillet 2009 une direction de la Responsabilité Environnementale et Sociétale, dont les attributions couvrent également les droits humains, lesquels font l'objet d'une attention particulière. Après plusieurs années de recherche et de développement de la part des organismes spécialistes des droits de l'Homme, différents outils de HRIA (Human Rights Impact Assessment) sont disponibles ou en voie de l'être. Par ailleurs, AREVA a expliqué qu'il jugeait essentiel l'effort de prévention et de formation à l'éthique et aux droits de l'homme dans l'entreprise. Le groupe participe en effet à un nouveau programme de formation inter-entreprise.

376. En outre, le groupe AREVA demande depuis 2006 à ses fournisseurs, dont ceux du Niger, de souscrire à « l'Engagement développement durable applicable aux fournisseurs ». Les prestataires du groupe doivent s'engager à promouvoir et à respecter la protection du droit international relatif aux droits de l'Homme dans leurs périmètres d'activité.

377. Enfin, en vertu du principe ALARA (As Low As Reasonably Achievable), AREVA conduit ses activités industrielles de manière à limiter autant que possible son impact sur l'environnement. Les activités minières et industrielles sont menées dans un périmètre défini de longue date et éloigné de plusieurs kilomètres des lieux d'habitation. En cas de préjudice avéré causé par son activité minière, AREVA met en œuvre les moyens nécessaires à la compensation des populations.

Observation

378. Le Rapporteur spécial remercie le Gouvernement pour sa réponse du 3 décembre 2010.

European Union

Communication sent

379. On **8 December 2010**, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegation letter to the European Union concerning the effect of the proposed European Union-India free trade agreement on access to medicines, both within India and in other parts of the developing world. The Special Rapporteur shared the concerns he had expressed to the Government of India (para 121-128) and reiterated that several Indian generic medicines, such as efavirenz and heat-stable lopinavir/ritonavir, were reportedly supplied to the public health system of Thailand under government use-compulsory licenses. He noted that the national health scheme would reportedly face major financial

constraints if the supply line of Indian generic medicines was disrupted. Similarly, in the private sector, it was reported that medicines from India had been competing to provide lower prices and therefore greater access for those individuals who bought their drugs themselves. Both of these avenues would allegedly be affected by TRIPS-plus provisions in the EU-India free trade agreement under negotiation.

Response received

380. On **23 December 2010**, Mr. Daniel Cohn-Bendit and Ms. Rebecca Harms, Co-Presidents of the Greens/ European Free Alliance at the European Parliament, as well as Ms. Ska Keller, Member of the European Parliament replied to the letter sent on 8 December 2010. They highlighted the contradicting views on the issue, basing themselves on a sustainability assessment conducted by the European Commission and on concerns of parliamentarians.

381. The assessment did not envisage direct effect on health. On the contrary, it came to the conclusion that increases in incomes, real wages, employment opportunities and declining poverty ratios could indirectly have positive effects on health in India. However, organizations such as Médecins sans Frontières expected that the FTA could severely hamper the global access to affordable medicines. Various parliamentarians also expressed concern that the negotiating agenda of the agreement reflected European pharmaceuticals business interests in a disproportioned way, and that poverty eradication and sustainable development were not central to the negotiations.

382. Given these contradicting views, the Special Rapporteur was invited to conduct a special inquiry concerning the possible impacts of the FTA on the access to affordable medicines in India and other developing countries.

Observation

383. The Special Rapporteur thanks the Government for its response received on 23 December 2010.